# SUPREME COURT OF THE UNITED STATES.

Nos. ~~198~~, ~~200~~, & ~~203~~.
132. 134.

No. ~~198.~~ 132

GREENE C. BRONSON & JAMES T. SOUTTER, TRUSTEES, &c., COMP'TS & APP'TS,

vs.

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE & MINNESOTA RAILROAD COMPANY, SELAH CHAMBERLAIN, HENRY VALLETTE, & AL.

Filed 25th May, 1862.

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No. ~~200.~~ 134

HENRY VALLETTE, IMPLEADED WITH THE LA CROSSE & MILWAUKEE RAILROAD COMPANY & OTHERS, APP'T,

vs.

GREENE C. BRONSON & JAMES T. SOUTTER, TRUSTEES, &c.

Filed 12th May 1862.

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No. 203.

SELAH CHAMBERLAIN, IMPLEADED WITH THE LA CROSSE & MILWAUKEE RAILROAD COMPANY & OTHERS, APP'T,

vs.

GREENE C. BRONSON & JAMES T. SOUTTER, TRUSTEES, &c.

Filed 9th June, 1862.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.

# SUPREME COURT OF THE UNITED STATES.

## Nos. 198, 200, & 203.

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No. 198.

GREENE C. BRONSON & JAMES T. SOUTTER, TRUSTEES, &c., COMP'TS & APP'TS,

vs.

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE & MINNESOTA RAILROAD COMPANY, SELAH CHAMBERLAIN, HENRY VALLETTE, & AL.

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No. 200.

HENRY VALLETTE, IMPLEADED WITH THE LA CROSSE & MILWAUKEE RAILROAD COMPANY & OTHERS, APP'T,

vs.

GREENE C. BRONSON & JAMES T. SOUTTER, TRUSTEES, &c.

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No. 203.

SELAH CHAMBERLAIN, IMPLEADED WITH THE LA CROSSE & MILWAUKEE RAILROAD COMPANY & OTHERS, APP'T,

vs.

GREENE C. BRONSON & JAMES T. SOUTTER, TRUSTEES, &c.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Bill of complaint | 2 | 1 |
| Rule for injunction and receiver | 22 | 16 |
| Subpœna | 22 | 17 |
| Return to subpœna | 24 | 18 |
| Rule to plead | 25 | 19 |
| Answer of Sebre Howard | 25 | 20 |

| | Original. | Print. |
|---|---|---|
| Demurrer of Hill & Mariner | 33 | 27 |
| Petition of John S. Rockwell | 33 | 28 |
| " " " allowed | 41 | 35 |
| Replication to answer of Howard | 41 | 35 |
| Demurrer of Hill & Mariner overruled | 41 | 36 |
| Answer of Rockwell | 41 | 36 |
| " Graham & Scott | 49 | 43 |
| " Mil., W., & Bar. Val. R. R. Co | 57 | 51 |
| " Chamberlain | 58 | 52 |
| Replication to answer of Rockwell | 61 | 55 |
| " " Graham & Scott | 62 | 55 |
| " " Mil., W., & B. V. R. R. Co | 62 | 56 |
| " " Chamberlain | 63 | 56 |
| Appointment of receiver | 63 | 57 |
| Answer of Mariner | 66 | 60 |
| Amn'd answer of Howard | 69 | 63 |
| Petition of A. Fleming | 70 | 64 |
| Affidavit of P. Dow vs. petition of Fleming | 79*a* | 73 |
| Petition of Fleming allowed | | |
| Answer of Mil. & Minn. R. R. Co | 80 | 79 |
| Replication to answer of Mil. & Minn. R. R. Co | 101 | 110 |
| " " Mariner | 102 | 111 |
| Amended answer of Chamberlain | 103 | 113 |
| " " Mil. & Minn. R. R. Co | 104 | 114 |
| Hearing | 105 | 115 |
| *Complainants' testimony.* | | |
| Mortgage | 106 | 115 |
| Deposition of P. Dow | 112 | 121 |
| " E. H. Goodrich | 119 | 129 |
| Third mortgage, bond, &c | 120 | 130 |
| Resolution from minute book of Co | 122 | 132 |
| Receipt of Guest | 123 | 133 |
| *Defendants' testimony.* | | |
| Commission, &c., to Winfield Smith | 124 | 133 |
| Interrogatories | 125 | 134 |
| Exceptions to interrogatories | 136 | 146 |
| Cross-interrogatories | 139 | 148 |
| Deposition of Moses Kneeland | 142 | 151 |
| " Byron Kilbourn | 149 | 158 |
| " D. W. Keyes | 157 | 165 |
| " Prentis Dow | 159 | 167 |
| " J. Hadley | 170 | 177 |
| " E. H. Broadhead | 175 | 182 |
| " Wm. Jervis | 180 | 186 |
| " John Catlin | 182 | 188 |

| | Original. | Print. |
|---|---|---|
| Deposition of James B. Cross | 185 | 191 |
| " N. P. Stanton | 187 | 193 |
| Motion to suppress depositions | 201 | 219 |
| Deeds to Mil., Wat., & B. V. R. R. Co | 202 | 220 |
| Articles of organization of Mil. & Min. R. R. Co | 224 | 241 |
| Exhibits of S. Chamberlain | 233 | 249 |
| Appearances of def'nts | 272 | 297 |
| Pro confesso as to def'nts not served | 273 | 297 |
| Reference to masters | 273 | 297 |
| Petition of E. C. Litchfield | 275 | 299 |
| Answer " " | 276 | 300 |
| Masters' report | 277 | 301 |
| Schedule 1st | 283 | 306 |
| " 2d | 284 | 308 |
| " 3d | 292 | 314 |
| *Testimony taken by masters.* | | |
| Deposition of Dow | 306 | 325 |
| " Goodrich | 318 | 337 |
| " Sill | 321 | 340 |
| " Jennings, (E. C.) | 323 | 341 |
| " Keyes | 327 | 346 |
| " Wells | 337 | 355 |
| " Jennings, (R. D.) | 338 | 356 |
| " Sill | 339 | 357 |
| " Kimball | 339 | 357 |
| " Keyes | 340 | 358 |
| " Miller | 341 | 359 |
| " Goodrich | 342 | 360 |
| " Chamberlain | 345 | 363 |
| " Keyes | 352 | 369 |
| " Palmer | 357 | 373 |
| " Keyes | 360 | 375 |
| " Goodrich | 362 | 377 |
| " Wells | 363 | 378 |
| " John Nazro | 377 | 391 |
| " Edgerton | 378 | 391 |
| " Chamberlain | 380 | 393 |
| " Goodrich | 383 | 396 |
| Stipulation as to testimony | 383 | 396 |
| Certificate of masters | 384 | 397 |
| Exhibit No. 1 | 385 | 398 |
| " 2 | 386 | 398 |
| " 3 & 4 | 386 | 399 |
| " 5 & 6 | 389 | 401 |
| " 7 | 390 | 402 |
| " 8 | 392 | 404 |

| | Original. | Print. |
|---|---|---|
| Exhibit No. 9 | 394 | 405 |
| " 10 | 400 | 411 |
| " 11 | 421 | 426 |
| " 12 | 422 | 427 |
| " 13 & 14 | 426 | 429 |
| " 15 | 431 | 433 |
| " 16 & 17 | 432 | 434 |
| " 18 | 436 | 437 |
| " 19 & 20 | 438 | 439 |
| " 21 | 439 | 440 |
| " 22 | 440 | 440 |
| " 23 | 441 | 441 |
| " 24 | 444 | 444 |
| " 25 | 476 | 472 |
| " 26 | 479 | 475 |
| " 27 | 480 | 475 |
| " 28 | 481 | 477 |
| " 29 | 485 | 480 |
| " 30 | 539 | 528 |
| " 31 | 541 | 530 |
| " 32 | 542 | 530 |
| " 33 | 543 | 531 |
| " 34 | 544 | 532 |
| " 35 | 549 | 536 |
| " 36 | 550 | 537 |
| " 37 | 551 | 538 |
| " 38 | 552 | 538 |
| " 39 | 554 | 540 |
| Exceptions to masters' rep't of Chamberlain | 556 | 542 |
| " " " complainants | 560 | 546 |
| " " " Graham, Scott, et als | 564 | 550 |
| " " " Fleming for Mil. & Min. R. R. Co | 576 | 561 |
| Supplement to masters' rep't | 586 | 573 |
| Petition of Vallette | 588 | 574 |
| Answer " | 594 | 580 |
| Exceptions " to masters' report | 599 | 584 |
| Argument of exceptions & order, &c. | 600 | 585 |
| Decree | 601 | 586 |
| Appeal bond of complainants | 605 | 590 |
| " Vallette | 607 | 592 |
| " Chamberlain | 608 | 593 |
| Compl't's testimony, resolutions of Co. as to 2d mortgage | 610 | 594 |
| Certificate of clerk | 617 | 600 |

1 DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF WISCONSIN.

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862.

Present: The honorable Andrew G. Miller, judge of said court, presiding; Darius C. Jackson, marshal; John M. Miller, clerk.

Among others, the following proceedings were had, to wit:

GREENE C. BRONSON and JAMES T. SOUTTER, Trustees, *complainants*, *vs.* The La Crosse & Milwaukee Railroad Company, The Milwaukee & Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, De Witt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, The Mercantile Bank of Hartford, Connecticut, August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, The Juneau Bank, The Milwaukee, Watertown & Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, and Charles Howard, *defendants*. } In Equity.

Be it remembered, that heretofore, to wit, on the ninth day of December, A. D. 1859, came the said complainants, by their solicitor, Mr. Ogden, and filed their bill of complaint against the said defendants, as follows:

2 *Bill of complaint.*

DISTRICT OF WISCONSIN,
*In Chancery:*

*To the judge of the district court of the United States for the district of Wisconsin.*

Greene C. Bronson and James T. Soutter, of the city of New York, and citizens of the State of New York, and trustees as hereinafter

mentioned, bring this their bill against The La Crosse and Milwaukee Railroad Company, a corporation created by an act of the legislature of Wisconsin, Selah Chamberlain, a citizen of the State of Ohio. Edwin Townsend, Avery Hill, A. V. Rudd, John H. Tesch, Franklin J. Blair, Edmund R. Persons, Ephraim Mariner, Thomas Turton, John Sercomb, Cicero Comstock, Lawrence G. Graham, Donald D. Scott, Edward H. Brodhead, De Witt C. Freeman, Sebre Howard, Joshua Hathaway, Charles Quentin, Sebastian Knetzger, Frederick Lind, August Sauthof, Moses M. Davis, Byron Kilbourn, George W. Chapman, Conrad Wellauer, citizens of the State of Wisconsin, The Milwaukee & Minnesota Railroad Company, The Milwaukee, Watertown & Baraboo Valley Railroad Company, and the Juneau Bank, corporations doing business in the State of Wisconsin, and created by the laws of the said State of Wisconsin; Edwin C. Litchfield, E. Bradford Greenleaf, Philip S. Justin, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, citizens of the State of New York; The Mercantile Bank of Hartford, a corporation doing business in the State of Connecticut, and Charles Howard, a citizen of the State of Michigan; William Gemmell, a subject of Victoria, Queen of Great Britain; James Wolstenholme, a citizen of the State of Rhode Island; Newcomb Cleveland, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simons, Nathaniel S. Bouton, citizens of the State of Illinois; Joshua Hathway, a citizen of the State of Georgia.

And thereupon your orators complain and say, that the said La Crosse & Milwaukee Railroad Company were created a body corporate by an act of the legislature of the State of Wisconsin, approved April the second, in the year eighteen hundred and fifty-two, with all the privileges, franchises and immunities incident to a corporation, and capable in law of purchasing, holding, selling, leasing, and conveying estates, either real, personal, or mixed, and were authorized generally to do and perform all and singular the acts and matters
3 which to any corporation it should lawfully appertain to and perform for the well-being of the said corporation, and with power to locate and construct a railroad, with one or more railways or tracks, from a point in the village of La Crosse, in the county of La Crosse, to a point in the city of Milwaukee, and with power to transport, take, and carry property and persons upon said road by the power and force of steam, of animals, or of any mechanical or other power, to erect and construct all such depots, station houses, warehouses, car houses and shops, engine houses and shops; to manufacture or purchase all necessary engines, tenders, cars, and other conveniences for running said road, with power to borrow any sums of money from any person or persons, corporation, or body politic of any kind, and at any rate of interest which might be agreed upon by and between such company and any person or party of whom such money might be obtained, any law on the subject of usury in the State of Wisconsin, or in any other State where such transaction might be made to the contrary notwithstanding. And with power to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other papers and securities, of such amount and kind as might be

deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities that it might incur in the construction, repair, equipment or running of said road; (the powers of the said corporation for the said purposes and for all purposes necessary to the carrying out of the object of said company, namely, the construction of a railroad from and to the points aforesaid, being thereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporation and upon all other parties to said contracts;) and with power under and by virtue of the said act and acts amendatory or supplementary to said act, and in pursuance of any acts of the legislature of the State of Wisconsin, to make, execute, issue, and deliver its bonds or obligations, and to prescribe the sum or sums for which each of said bonds shall be issued, the time or times, and place or places when and where the principal and interest of the same should be payable, the person or persons, trustee or corporation to whom they should be payable, and whether payable to order or bearer, and how otherwise negotiable, the rate of interest which such bonds should bear,
4 and the manner and form in which the interest coupons annexed to them should be executed; and to secure the payment of any or all of said bonds, and in its corporate capacity to make, execute, and deliver mortgages or deeds of trust upon the whole or any part of its railroads constructed or authorized to be constructed, and any or all the estate, real, personal or mixed, in possession or in expectancy, and to confer upon the trustee or mortgagee full and ample powers to enter into and upon, and to take possession of, have, use, and employ, to sell and dispose of the whole or any part of said railroad or estate, together with the franchises appertaining to said railroad, and all corporate franchises, rights and privileges of the said La Crosse and Milwaukee Railroad Company, and by its agents or brokers, or otherwise, either in or out of the State of Wisconsin, to sell, loan, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds, at par or at any price less than par, and for such sum or sums and on such terms as to the said company or its said agents or brokers should appear most for the interest of the said company: and the rolling stock of said railroad company, used in connection with its railroad, was declared to be and is by the statutes, in such case made and provided, fixtures; and all such property, and all additional rights of way, depot grounds and other real property acquired subsequent to the execution of any such trust deeds or mortgages which may be provided for therein, should be subject to the same lien as might be created by such trust deed or mortgage upon the property therein described, to which such company had title at the time of its execution.

And your orators further show that the legislature of the State of Wisconsin, on or about the eleventh day of March, 1851, passed an act to incorporate the Milwaukee and Watertown Railroad Company, whereby they were declared and created a body corporate and politic by the name and style of the Milwaukee and Watertown Railroad Company, with all the privileges, franchises, and immunities incident to a corporation.

And your orators further show that the legislature of the State of Wisconsin, on or about the 13th day of October, A. D. 1856, passed an act entitled "An act to amend 'an act to incorporate the La Crosse and Milwaukee Railroad Company,'" approved April 2nd, 1852, by which said act the said La Crosse and Milwaukee Railroad Company was authorized to consolidate the capital stock with the Mil-
5 waukee and Watertown Railroad Company, and declaring that upon such consolidation all the rights and privileges, grants, franchises, and immunities, conferred by the charter of the said companies, respectively, and by the acts amendatory thereto should be merged and conferred upon said consolidated company, and that all the property and estate, real and personal, should become and be the property of the said consolidated company to all intents and purposes, together with all the rights and powers of each company, by virtue of said acts and the acts amendatory thereto. And your orators further show that the said company by their acts in pursuance of said statutes consolidated and became one company, and were authorized to act as such and to mortgage or convey by trust deed, or otherwise, all the property, effects, and franchises of each or both of said corporations.

And your orators further show that the said defendant, the La Crosse and Milwaukee Railroad Company, executed under their corporate seal, and with the signatures of their president and secretary, one thousand bonds, in each of which the said La Crosse and Milwaukee Railroad Company acknowledged themselves indebted to the bearer thereof in the sum of one thousand dollars for money borrowed for the construction of their roads, and which sum they agreed to pay to the bearer thereof on the first day of September, 1870, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per centum per annum, payable in the city of New York semi-annually on the first day of March and the first day of September in each year on presentation and delivery of the interest warrants or coupons thereto annexed, which said coupons were by their terms payable at said Bank of the Republic, and all of said bonds were of the same tenor, and numbered from one to one thousand, respectively, making in all one million dollars, and the same were all dated September 1st, 1857.

And your orators further show that all of said bonds were duly registered and countersigned by your orators as trustees and delivered to said company, and the same have been sold, transferred, and delivered, by said company, to divers persons, and the same are now held and owned as existing claims; and as collateral security for the payment of the said bonds, or the monies therein mentioned and the interest thereon to become due and payable from time to time, the said defendant, the La Crosse and Milwaukee Railroad Com-
6 pany, in consideration of one dollar, executed a mortgage or deed of trust, dated the 17th day of August, 1857, to your orators, Greene C. Bronson and James T. Soutter, of the city and State of New York, and duly acknowledged and delivered the same to your orators; whereby they granted, bargained, sold, conveyed, and confirmed unto your orators all and singular the railroad of said

company, commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road had then been constructed and was in full operation. And also the railroad of the said company (as well that part which had then been constructed as that part which remained to be constructed) from Watertown, by way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last mentioned road, being the part between Watertown and Columbus, had been constructed and was then in full operation, including all and singular the several tracts, pieces or parcels of land which then were or might thereafter be or constitute the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be part of or appertain to the said railroads, or either of them; and also all and singular the superstructure of said railroads, whether then made or to be made thereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether then built or made or to be built and made thereafter; and also all and singular the locomotive engines, and other rolling stock, and all the other equipments of every kind and description which had already been or might thereafter be procured for or used on said railroads, or either of them, and all the materials, tools, implements, and utensils, and other personal property which had been or might thereafter be procured for or used in connection with the said railroads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland aforesaid. And it was thereby declared to be the intention of the parties to the said trust deed or mortgage to convey to and vest in your orators all the property, real and personal, of the said railroad company, to be acquired thereafter, as well as that which had already been acquired, together with all the rights,
7 liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroad had then been fully constructed and equipped, but said railroad from Milwaukee to Portage City was by the said mortgage declared to be subject to a first mortgage on the same, of ten thousand dollars a mile, amounting in the aggregate to nine hundred and fifty thousand dollars; and the first eighteen miles of said road, from Milwaukee westward, was declared to be subject to a second mortgage of one hundred and fourteen thousand dollars, and the next forty miles of said road, westward of the said eighteen miles, was declared to be subject to a second mortgage of two hundred thousand dollars.

And your orators further show that the said conveyance to your orators in and by said trust deed or mortgage were declared to be upon the trusts terms and conditions therein expressed, as follows: First. Until default should be made in the payment of the said bonds,

or some of them, or the interest thereon, that the said railroad company should be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof to its own use, in the same manner as though the said deed had not been made. Second. In case default for the space of sixty days should be made in the payment of any of said interest warrants, or coupons as they should respectively fall due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it should be lawful, and your orators were thereby authorized in their discretion, either in person or by their attornies, agent or agents, to enter into and upon and take possession of all and singular the railroads and all other property, real and personal, thereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroads and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by way of
8 Columbus, to Midland, either at private or public sale; and to execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of your orators and said railroad company of in or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale should be made at auction, notice of such intended sale should be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York and a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same should be given. And in case the interest in default should be at any time equal to the amount of interest for one year on all the bonds then outstanding, or in case default should be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, that then and in either of said cases your orators, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, should proceed to make such sales and conveyances as are above mentioned.

And your orators further show that the said defendant, the La Crosse and Milwaukee Railroad Company, in and by said trust deed or mortgage, covenanted and agreed to and with your orators and the survivor and successor of them that said company would from time to time, during the continuance of the trust, make execute, cause to be duly recorded and delivered to your orators all such further conveyances and assurances, and would do all such further acts and things as might either be necessary or proper for more effectually vesting in your orators all such rights, title, interest, or estates, both legal and equitable, as said company then had or might thereafter acquire of, in or to all and every part of the property thereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid. And that the said defendant, the La Crosse and Milwaukee Railroad Company, in and by the said

trust deed or mortgage, further covenanted and agreed with your orators that they would from time to time pay all costs, charges,
9 expenses, and compensation of your orators in about or for the execution of the trust, and would in all things keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they might sustain or be put to in consequence of accepting the trust, or of anything which might be done or omitted under it, saving only such damages as might arise from the culpable act or neglect of your orators. And the said company authorized your orators to appoint all such attorneys, counsellors, clerks, and other agents as they might deem proper in the execution of the trust, and agreed that they should not be answerable for the default or other misconduct of such attorneys, counsellors, or other agents unless chargeable with culpable negligence in their selection, nor should your orators be responsible for anything short of gross negligence or wilful default in the discharge of any of their duties, nor should either of your orators be answerable for the act omission or default of his associate.

And the said railroad company in and by the said trust deed or mortgage covenanted and directed that all moneys which might be received by your orators under the said trust deed, after deducting therefrom all costs, counsel fees, charges, and other expenses of your orators, and their compensation for executing the trust, should be applied to the payment of the bond which might be issued under the trust; and the surplus, if any, should be paid to the said company. All of which, by reference to the said trust deed or mortgage, now ready to be produced as this court shall direct, will more fully and at large appear. And your orators further show that the said mortgage was duly witnessed and acknowledged, and was afterwards and on the twenty-first day of August, 1857, duly recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 234, 235, 236, 237, 238, and 239, as by the certificate on said mortgage will more fully appear.

And your orators further show that the defendant, the La Crosse and Milwaukee Railroad Company, has failed to comply with their covenant and agreement, as contained in said several bonds and in said trust deed or mortgage, by omitting to pay the interest on the said bonds, respectively, which fell due and payable on the first day of September, A. D. 1859, amounting on each bond to the sum
10 of forty dollars, and upon all the bonds, in the aggregate to the sum of forty thousand dollars, and that there is now justly due upon the said bonds the sum of forty thousand dollars, and the interest thereon from September 1st, A. D 1859.

And your orators further show that no proceedings have been had at law or otherwise, to their knowledge or belief, for the recovery of the said sum of forty thousand dollars. The said interest on said bonds still remains due and payable.

And your orators further show that the defendant, the La Crosse and Milwaukee Railroad Company, did not deposit with or leave with, or in any form provide at the Bank of the Republic in the city of New York, at or about the first day of September, 1859, or on any

or some of them, or the interest thereon, that the said railroad company should be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof to its own use, in the same manner as though the said deed had not been made. Second. In case default for the space of sixty days should be made in the payment of any of said interest warrants, or coupons as they should respectively fall due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it should be lawful, and your orators were thereby authorized in their discretion, either in person or by their attornies, agent or agents, to enter into and upon and take possession of all and singular the railroads and all other property, real and personal, thereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroads and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by way of
8 Columbus, to Midland, either at private or public sale; and to execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of your orators and said railroad company of in or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale should be made at auction, notice of such intended sale should be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York and a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same should be given. And in case the interest in default should be at any time equal to the amount of interest for one year on all the bonds then outstanding, or in case default should be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, that then and in either of said cases your orators, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, should proceed to make such sales and conveyances as are above mentioned.

And your orators further show that the said defendant, the La Crosse and Milwaukee Railroad Company, in and by said trust deed or mortgage, covenanted and agreed to and with your orators and the survivor and successor of them that said company would from time to time, during the continuance of the trust, make execute, cause to be duly recorded and delivered to your orators all such further conveyances and assurances, and would do all such further acts and things as might either be necessary or proper for more effectually vesting in your orators all such rights, title, interest, or estates, both legal and equitable, as said company then had or might thereafter acquire of, in or to all and every part of the property thereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid. And that the said defendant, the La Crosse and Milwaukee Railroad Company, in and by the said

trust deed or mortgage, further covenanted and agreed with your orators that they would from time to time pay all costs, charges,
9 expenses, and compensation of your orators in about or for the execution of the trust, and would in all things keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they might sustain or be put to in consequence of accepting the trust, or of anything which might be done or omitted under it, saving only such damages as might arise from the culpable act or neglect of your orators. And the said company authorized your orators to appoint all such attorneys, counsellors, clerks, and other agents as they might deem proper in the execution of the trust, and agreed that they should not be answerable for the default or other misconduct of such attorneys, counsellors, or other agents unless chargeable with culpable negligence in their selection, nor should your orators be responsible for anything short of gross negligence or wilful default in the discharge of any of their duties, nor should either of your orators be answerable for the act omission or default of his associate.

And the said railroad company in and by the said trust deed or mortgage covenanted and directed that all moneys which might be received by your orators under the said trust deed, after deducting therefrom all costs, counsel fees, charges, and other expenses of your orators, and their compensation for executing the trust, should be applied to the payment of the bond which might be issued under the trust; and the surplus, if any, should be paid to the said company. All of which, by reference to the said trust deed or mortgage, now ready to be produced as this court shall direct, will more fully and at large appear. And your orators further show that the said mortgage was duly witnessed and acknowledged, and was afterwards and on the twenty-first day of August, 1857, duly recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 234, 235, 236, 237, 238, and 239, as by the certificate on said mortgage will more fully appear.

And your orators further show that the defendant, the La Crosse and Milwaukee Railroad Company, has failed to comply with their covenant and agreement, as contained in said several bonds and in said trust deed or mortgage, by omitting to pay the interest on the said bonds, respectively, which fell due and payable on the first day of September, A. D. 1859, amounting on each bond to the sum
10 of forty dollars, and upon all the bonds, in the aggregate to the sum of forty thousand dollars, and that there is now justly due upon the said bonds the sum of forty thousand dollars, and the interest thereon from September 1st, A. D 1859.

And your orators further show that no proceedings have been had at law or otherwise, to their knowledge or belief, for the recovery of the said sum of forty thousand dollars. The said interest on said bonds still remains due and payable.

And your orators further show that the defendant, the La Crosse and Milwaukee Railroad Company, did not deposit with or leave with, or in any form provide at the Bank of the Republic in the city of New York, at or about the first day of September, 1859, or on any

day before the filing of this bill, any sum of money for the payment of the said interest due and payable on the said first day of September, according to the said trust deed or mortgage at the said Bank of the Republic, or at any other place, to the knowledge or belief of your orators. And your orators further show that the payment of the said interest has been demanded of the said Bank of the Republic since the same became due and payable, and that payment thereof was refused.

And your orators further show that by and in pursuance of said mortgage or deed of trust on such default your orators were, as they have been advised and believe, entitled to take possession of the said railroad, and secure the income and profits thereof, and that in pursuance of such power your orators have demanded the possession of the said railroad from the city of Milwaukee to Portage City, with the income and profits thereof, but that the same was refused and denied to your orators.

And your orators further show that on or about the 26th day of September, 1857, the said defendant, the La Crosse and Milwaukee Railroad Company, executed and delivered to the defendant, Selah Chamberlain, a certain writing, under the corporate seal of the said railroad company, termed a lease, a copy of which is hereto attached and made part of this your orators' bill. That the said writing or lease, by its terms, gave to the said Selah Chamberlain the
11 exclusive possession and entire control of the entire line of railroad of the said La Crosse and Milwaukee Railroad Company, being between the cities of Milwaukee and La Crosse, including the said portion between the city of Milwaukee and Portage City, conveyed to your orators as aforesaid, upon the trust, however, that after paying the necessary running expenses, &c., he should pay not only the interest secured by the said trust deed or mortgage to your orators, but also the interest and sinking fund mentioned and described in the said mortgage or trust deed of your orators as prior liens and incumbrances thereto. And your orators further state the *the* said defendant, Selah Chamberlain, at or about the time of the execution of the said writing or lease went into the actual possession of all the said railroad therein described, and has been ever since, and is now, in the actual possession thereof; and your orators further state on information and belief, and charge, that at the time of the execution of the said writing or lease from the said La Crosse and Milwaukee Railroad Company to the said Selah Chamberlain, as aforesaid, the said company were entirely and hopelessly bankrupt, and that the said writing or lease was executed for the purpose of securing to the said Chamberlain the payment of the indebtedness specified in the said writing or lease; and your orators show that the same was subsequent to the said mortgage of your orators and subject thereto.

And your orators further show that the said railroad from Watertown to Midland, by way of Columbus, is only partially built; that without its connection with the railroad from Milwaukee to Watertown it is only a short isolated piece of road of little or no value, and that the same has been sold and conveyed by the said La Crosse and Milwaukee Railroad Company to the Milwaukee, Watertown, and

Baraboo Valley Railroad Company, and that from its entire inadequacy as security your orators are obliged to look to the said railroad from Milwaukee to Portage City, with its appurtenances and rolling stock, as their principal security.

And your orators further state upon information and belief that neither the said defendant, the La Crosse and Milwaukee Railroad Company, nor the defendant Selah Chamberlain, nor any one for them, has paid the interest due and payable upon the indebtedness of
12 the said La Crosse and Milwaukee Railroad Company, which are and were liens upon the said railroad from Milwaukee to Portage City, with its equipments, rolling stock, depot grounds, and appurtenances, prior to the lien created by the said trust deed or mortgage to your orators; that is to say, the interest due on nine hundred and fifty thousand dollars on the first day of November, 1859; the interest due on three hundred and fourteen thousand dollars on the first day of September, 1859, amounting in the aggregate to the sum of forty-eight thousand nine hundred and ninety dollars, according to the terms and conditions of bonds issued by the defendant, the La Crosse and Milwaukee Railroad Company, or of bonds the payment of which have been assumed by them, and all of which are secured by mortgages or deeds of trust, or in some way which constitutes them prior incumbrances to the said trust deed or mortgage of your orators, whereby the security of your orators has become greatly jeopardized.

And your orators further state on their information and belief that the said railroads, with their appurtenances included in the said mortgage or deed of trust to your orators, is a slender and insufficient security for the payment of the sums of money and the interest theron, which are liens upon the said railroad, and upon the property included and intended to be included in the said deed of trust, and prior to and including the liens created by the mortgage or deed of trust to your orators, as before set forth, and that while the said railroad from Milwaukee to Portage City is in the possession of the defendant Selah Chamberlain it will greatly deteriorate in value for the want of necessary repairs, while the indebtedness secured thereby is increasing by reason of the non-payment of interest.

And your orators further state upon information and belief that the said mortgage or trust deed to your orators as aforesaid conveyed a large number of locomotive engines and rolling stock of various description, and together of very great value, at least to the value of three hundred thousand dollars; that the same belonged to and were a part of said railroad from Milwaukee to Portage City, and that the same have been and are used by the said Selah Chamberlain for other purposes than for the working of the said railroad embraced in the said mortgage or deed of trust to your orators; that the same
13 are daily deteriorating in value, and that the earnings therefrom are diverted to other purposes than to the payment of the interest accruing on the said liens on the said railroad; whereby your orators charge that the security of the said trust deed or mortgage to your orators has become and is of much less value, of at least fifty thousand dollars less value than it would have been, than if the use

of the said engines and rolling stock had been confined to the said railroad, or if the earnings therefrom had been applied towards the payment of the said interest.

And your orators further state that default of more than sixty days has been made in the payment of the interest warrants or coupons attached to the said bonds due and payable on the first day of September, 1859, and that by the said deed of trust your orators, upon the happening of that event, were, by said deed of trust authorized and empowered, by themselves, their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the said railroads and all the other property included or intended to be included in the said deed of trust, and to sell the same either at public or priviate sale, and give a good conveyance of the same.

And your orators further state that they have applied for the possession of the said road and its appurtenances, and for further conveyances according to the covenants and agreements on the part of the defendant, the La Crosse and Milwaukee Railroad Company, but that the said defendant, the La Crosse and Milwaukee Railroad Company, have refused to give up to your orators or their attorneys or agents said railroad with its appurtenances, or to give to your orators such further conveyances or assurances.

And your orators further state that all the said bonds are made payable to bearer and are negotiable by delivery, and that, as your orators believe, many of them are now held by various parties unknown to your orators. And that many of said bondholders, holding in the aggregate six hundred bonds, have requested your orators to proceed to enforce the lien of the said trust deed or mortgage, and to take such proceedings at law or in equity as to your orators might seem best to make their said security available; that the said bondholders are principally non-residents of this State, and that this bill is filed in the name of your orators, but for the benefit and security of all of said bondholders. That the
14 number of said bondholders is so great that they cannot without manifest inconvenience and oppressive delays in this suit be all brought before this court, and that your orators fully represent in this suit the interest of all said bondholders. And your orators further state the said defendants, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Connecticut, August Lauthrop, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, and George W. Chapman, Moses

M. Davis, and Charles Howard, have or claim some interest in the mortgage premises as subsequent purchasers or incumbrances or otherwise.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to this your orator's bill. And that the said defendant, the La Crosse and Milwaukee Railroad Company, may be adjudged to pay to your orators, as trustees for the benefit of said bondholders, the arrears of interest before mentioned and now due or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended. And in default thereof that the said defendants and all persons claiming or to claim under them or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises and those included in the said trust deed, and every part thereof, with all and every the appurtenances, and that they may be adjudged and decreed to deliver over to your orators, or their attorney or agent, the possession of said railroad and all its appurtenances, and all its books, title deeds, and writings in relation to the same, and that all the income of the said road may be applied to the payment of said monies due and to become due, and that all and singular the said property mentioned or intended so to be in the said mortgage or trust deed may be sold under and according to the decree of this court. And that out of the money arising from the sale thereof, your orators may be paid all the principal and interest due or to become due upon the said bonds, and all the interest which is now due and may become due thereon, together with all the costs and charges by them in this behalf sustained or entitled to. And that the said defendant, the La Crosse and Milwaukee Railroad Company, be adjudged to pay any deficiency which may remain after applying all of said monies so applicable thereto, and that your orators may have such other or further relief, order, or decree, or both in the premises as shall be just and equitable. And that, in the meantime, your orators, their agents or attornies, may have authority to take possession of the said railroad and its appurtenances and secure all the income thereof, or that a receiver may be appointed according to the course and practice of this court, and with the usual powers of receivers in like cases of said roads and all their appurtenances, receipts, and earnings. And that until the final decree in this suit, the said La Crosse and Milwaukee Railroad Company, their attornies, counsellors, officers, agents, trustees, treasurers, and all persons acting under them or either of them, and the said Selah Chamberlain, his agents, servants, and attorneys, may be restrained, by an injunction issuing out of this court, from using any of the engines, cars, or any of the property included in the said mortgage or deed of trust, for any purpose whatever.

May it therefore please your honor to grant unto your orators a writ of injunction, issuing out of and under the seal of this court, di-

of the said engines and rolling stock had been confined to the said railroad, or if the earnings therefrom had been applied towards the payment of the said interest.

And your orators further state that default of more than sixty days has been made in the payment of the interest warrants or coupons attached to the said bonds due and payable on the first day of September, 1859, and that by the said deed of trust your orators, upon the happening of that event, were, by said deed of trust authorized and empowered, by themselves, their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the said railroads and all the other property included or intended to be included in the said deed of trust, and to sell the same either at public or priviate sale, and give a good conveyance of the same.

And your orators further state that they have applied for the possession of the said road and its appurtenances, and for further conveyances according to the covenants and agreements on the part of the defendant, the La Crosse and Milwaukee Railroad Company, but that the said defendant, the La Crosse and Milwaukee Railroad Company, have refused to give up to your orators or their attorneys or agents said railroad with its appurtenances, or to give to your orators such further conveyances or assurances.

And your orators further state that all the said bonds are made payable to bearer and are negotiable by delivery, and that, as your orators believe, many of them are now held by various parties unknown to your orators. And that many of said bondholders, holding in the aggregate six hundred bonds, have requested your orators to proceed to enforce the lien of the said trust deed or mortgage, and to take such proceedings at law or in equity as to your orators might seem best to make their said security available; that the said bondholders are principally non-residents of this State, and that this bill is filed in the name of your orators, but for the benefit and security of all of said bondholders. That the
14 number of said bondholders is so great that they cannot without manifest inconvenience and oppressive delays in this suit be all brought before this court, and that your orators fully represent in this suit the interest of all said bondholders. And your orators further state the said defendants, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Connecticut, August Lauthrop, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, and George W. Chapman, Moses

M. Davis, and Charles Howard, have or claim some interest in the mortgage premises as subsequent purchasers or incumbrances or otherwise.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to this your orator's bill. And that the said defendant, the La Crosse and Milwaukee Railroad Company, may be adjudged to pay to your orators, as trustees for the benefit of said bondholders, the arrears of interest before mentioned and now due or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended. And in default thereof that the said defendants and all persons claiming or to claim under them or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises and those included in the said trust deed, and every part thereof, with all and every the appurtenances, and that they may be adjudged and decreed to deliver over to your orators, or their attorney or agent, the possession of said railroad and all its appurtenances, and all its books, title deeds, and writings in relation to the same, and that all the income of the said road may be applied to the payment of said monies due and to become due, and that all and singular the said property mentioned or intended so to be in the said mortgage or trust deed may be sold under and according to the decree of this court. And that out of the money arising from the sale thereof, your orators may be paid all the principal and interest due or to become due upon the said bonds, and all the interest which is now due and may become due thereon, together with all the costs and charges by them in this behalf sustained or entitled to. And that the said defendant, the La Crosse and Milwaukee Railroad Company, be adjudged to pay any deficiency which may remain after applying all of said monies so applicable thereto, and that your orators may have such other or further relief, order, or decree, or both in the premises as shall be just and equitable. And that, in the meantime, your orators, their agents or attornies, may have authority to take possession of the said railroad and its appurtenances and secure all the income thereof, or that a receiver may be appointed according to the course and practice of this court, and with the usual powers of receivers in like cases of said roads and all their appurtenances, receipts, and earnings. And that until the final decree in this suit, the said La Crosse and Milwaukee Railroad Company, their attornies, counsellors, officers, agents, trustees, treasurers, and all persons acting under them or either of them, and the said Selah Chamberlain, his agents, servants, and attorneys, may be restrained, by an injunction issuing out of this court, from using any of the engines, cars, or any of the property included in the said mortgage or deed of trust, for any purpose whatever.

May it therefore please your honor to grant unto your orators a writ of injunction, issuing out of and under the seal of this court, di-

rected to the defendants, directed to the said La Crosse and Milwaukee Railroad Company and Selah Chamberlain, and each of them, their attornies, solicitors, agents, and all other persons acting under them, commanding them and each of them absolutely to desist and refrain from using any of the engines, cars, or any of the property included in the said mortgage or deed of trust, for any purpose whatever.

May it please your honor to grant to your orators a writ of subpœna commanding the said defendants, the La Crosse and Milwaukee
16 Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolsteuholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Ruetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, The Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Hilbourn, Nathaniel S. Bouton, The Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, and George W. Chapman, Moses M. Davis, and Charles Howard, commanding them and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orators will ever pray, &c.

THOMAS L. OGDEN,
*Sol. for Compl't.*
JAMES S. BROWN,
*Of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

Prentis Dow, being duly sworn, saith, that Greene C. Bronson and James T. Soutter, the complainants in the foregoing bill, are now in the city of New York, as deponent verily believes; that this deponent is the attorney in fact of the said Greene C. Bronson and James T. Soutter, by virtue of a power of attorney under seal, for the purpose of instituting this suit; that this deponent has read said bill of complaint and knows the contents thereof, and that the same is true to his own knowledge except as to the matters stated on information or belief, and as to those matters he believes it to be true.

PRENTIS DOW.

Subscribed and sworn to before me December 9th, A. D. 1859.
J. M. MILLER, *Clerk.*

Issue a subpœna in the above suit returnable on the first Monday of January, 1860.

THOMAS L. OGDEN, *Sol.*

J. M. MILLER, Esq., *Clerk, &c.*

17 Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part, hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in, and is appurtenant to, the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can conveniently be done, and the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all building, tenements, and fixtures of whatever kind and description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith or belonging or incident thereto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall from and after the said 30th day of September, and until this agreement shall be terminated in the manner herein provided, operate so much of said railroad as is ready for operation, and from time
18 to time such portion of the same as shall be made ready for operation, in such manner as will produce the largest amount of net receipts.

That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate in the manner hereinafter provided all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interests of said company, buy additional rolling stock and appropriate the receipts of said railroad to the payment for the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the

cost and expenses of said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part a correct statement, exhibiting the total receipts and income of said railroad from all sources during the next preceeding month, also the cost and expenses during such month of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expenses of operating said railroad, and also exhibiting the net receipts from said railroad after deducting such cost and expense of rolling stock and repairs and of operating, and that he will at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expense of repairs and operating, as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

19

1st. To the payment of all coupons hereafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 15th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 6, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars payable November 1st, 1857.

2d. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3d. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse & Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the thirteenth day of July, A. D. 1854.

4th. To the payment of all coupons hereafter to become due on a million of dollars of the bonds of said railroad company, secured by mortgage or deed of trust on the railroad of said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5th. Whatever balance of said net receipts, as aforesaid, shall remain after the payment of said coupons and sinking funds shall be applied by the said party of the second part in payment of the amount due or hereafter to become due to him by virtue either of a certain contract between said parties, dated January 20th, 1857, a supple-

mental contract between said parties, dated April 30th, 1857, or a certain contract between said parties, dated November 20th, 1856, or of a contract modifying said contracts, entered into between said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New
20 Lisbon and La Crosse, which is to be paid for from the means of said company other than said income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the net earnings of said railroad such sum as by the terms and conditions of the aforesaid contracts for the construction of said railroads, bearing date, respectively, November 20th, 1856, January 26th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive according to the terms and conditions of the said contracts, that he will surrender up to said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatever kind or description, connected therewith or appurtenant thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith or belonging or incident thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part by virtue of this contract; and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed, or consumed in the construction or operation of said railroad; and that he will convey and deliver to said party of the first part all personal property which shall have been required for said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad; and that he will at such time deliver on the line of said railroad to said party of the first part fifteen thousand cords of wood, and that whenever said party of the second part shall have received, as aforesaid, such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof the said party of the first part hath
21 caused these presents to be signed by its president and secretary, and its corporate seal to be hereunto affixed, and the same are signed by said party of the second part.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

[SEAL] By BYRON KILBOURN, *President.*

S. CHAMBERLAIN. [SEAL.]

JACKSON HADLEY, *Secretary.*

Signed, sealed, and delivered in presence of—

H. L. PALMER.

T. W. BEAVER.

STATE OF WISCONSIN,
*Milwaukee County, ss:*

Be it remembered that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common seal of the said company and was affixed thereto by their authority, and that he, as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
*Notary Public, Milwaukee Co.*

And same day came the complainants, by their solicitors, and entered in the order and rule book a rule on the defendants to show cause why an injunction should not be issued and a receiver be appointed as follows:

22 *Rule for injunction and receiver.*

Greene C. Bronson and James T. Soutter, trustees,
*against*
The La Crosse and Milwaukee Railroad Company, Selah Chamberlain, Edwin Townsend, Avery Hill, A. V. Rudd, John H. Tesch, Franklin J. Blair, Edward R. Persons, Ephraim Mariner, Thomas Turton, John Sercomb, Cicero Comstock, Lawrence G. Graham, Donald D. Scott, Edward H. Broadhead, Dewitt C. Freeman, Sebre Howard, Joshua Hathaway, Charles Quentin, Sebastian Knetzger, Frederick Lind, August Lauthof, Moses M. Davis, Byron Kilbourn, George W. Chapman, the Milwaukee and Minesota Railroad Company, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, the Juneau Bank, Edwin C. Litchfield, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, the Mercantile Bank of Hartford, Ct., Charles Howard, William Gemmel, James Wolstenholme, Newcomb Cleveland, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simons, Nathaniel S. Bouton, Conrad Wellauer.

On motion of Thomas L. Ogden, complainants' solicitor, ordered the *the* defendants show cause on Monday the 2d day of January, 1860, at 10 o'clock a. m. of that day, why an injunction should not issue and a receiver be appointed according to the prayer of the complainants' bill on file.

THOMAS L. OGDEN.
*Complainants' Solicitor.*

Whereupon a subpœna issued, returnable the first Monday of January next ensuing, as follows:

*Subpœna.*

UNITED STATES OF AMERICA,
*District of Wisconsin:*

{ SEAL OF COURT. } The President of the United States of America to the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, and Charles Howard, greeting:

23 You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin in our court of chancery, in and for the district aforesaid, on the first Monday of January next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Greene C. Bronson and James T. Soutter, trustees. And to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip L. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses

M. Davis, and Charles Howard, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee in the said district, this ninth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth.

J. M. MILLER, *Clerk.*

THOMAS L. OGDEN, *Solicitor.*

It is ordered by our said court that the said the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstelholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M.
24 Davis, and Charles Howard, the defendants aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed. And it is further ordered that they show cause by Monday the second day of January next, at ten o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed according to the prayer of the bill on file.

*Return.*

And afterwards, and on or before the return day of said subpœna, came the said marshal, and returned the same with his return indorsed thereon as follows:

Served on the within named La Crosse and Milwaukee Railroad Company, by delivering a copy of this subpœna to S. R. Kane, secretary of said company, this 10th day of December, 1859. Served on the within named Milwaukee, Watertown, and Barbaroo Valley Railroad Company, by delivering a copy of this subpœna, personall, to S. L. Rose, president of said company, this 10th day of December, 1859. The within named Sebre Howard, Conrad Wellauer, Newcomb Cleveland, William Gemmell, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, The Mercantile Bank of Hartford, Ct., August Lauthof, Nathaniel S. Bouton, George W. Chapman, and Charles Howard, not found. John H. Lewis, marshal. Fees, $5 46. Served on the within named Joshua Hathaway, Thomas Turton, John Sercomb,

Ephraim Mariner, Avery Hill, Franklin J. Blair, Edmund R. Parsons, Edwin Townsend, Charles Quentin, and John H. Tesch, by delivering each of them, personally, a cop of this subpœna; and served on the within named A. V. Rudd, D. C. Freeman, Edward H. Brodhead, Byron Kilbourn, and Cicero Comstock, by leaving a copy of this subpœna at each of their several places of abode with a free white person, a member of the family, this 10th day of December, 1859. Served on the within named Milwaukee and Minnesota Railroad Company by delivering a copy of this subpœna, personally, to Dwight W. Keyes, secretary of said company, and served on the within named Selah Chamberlain, by delivering him, personally, a copy of this subpœna, this 12th day of December, 1859. Served on the within named Juneau Bank, by delivering a copy of this subpœna, personally, to James B. Cross, president of said bank, this 12th day of December, 1859. Served on the within named Lawrence G. Graham, by delivering him, personally, a copy of this subpœna, this 12th day of December, 1859. J. H. Lewis, marshal. By F. Henry, dep. Fees, $51 60. I hereby deputize Decatur Vandercook to serve this subpœna on Moses M. Davis. J. H. Lewis, marshal. Served on the within named Moses M. Davis, by delivering him, personally, a copy of this subpœna, this 10th day of December, 1859. D. Vandercook. Fees, $7 50. The above return subscribed and sworn to before me this 14th day of Dec., 1859. Geo. Eye, notary public, Wis. Served on the within named Donald D. Scott, by leaving a copy of this
25 subpœna at his usual place of abode with a free white person, a member of the family, this 13th day of December, A. D. 1859. J. H. Lewis, marshal. By J. C. Gilman, deputy. Fees, $5 58.

*Rule to plead.*

And afterwards, to wit, on the first Monday of January, A. D. 1860, came the complainants, by their solicitor, and entered in the order and rule book a rule on the defendants to plead as follows:

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, &c.,

*vs.*

The La Crosse and Milwaukee Railroad Company, the Milwaukee and Minesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence C. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Parsons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Conn., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, and Charles Howard.

On motion of Thomas L. Ogden, solicitor for complainants, it is ordered that the defendants in this suit plead, answer, or demur to the complainants' bill of complaint on or before the first Monday of February, A. D. 1860, and in default thereof that the bill be taken as confessed.

THOMAS L. OGDEN,
*Sol. for compl'ts.*

*Answer of S. Howard.*

And afterwards, to wit, on the fourth day of February, A. D. 1860, came the defendant, Sebre Howard, by his solicitor, Mr. Hubbell, and filed his answer as follows:

DISTRICT COURT OF THE UNITED STATES,
*Wisconsin District:*

Separate answer of Sebre Howard, one of the defendants to the bill of complaint of Greene C. Bronson and James T. Soutter, complainants:

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit of exception to the many errors
26 and insufficiences in the said complainants' bill of complaint contained for answer thereto, or to so much and such parts thereof as he is advised it is material for them to make answer unto, he answers and says he admits that the defendant, the La Crosse and Milwaukee Railroad Company, at the time and in the manner in said bill stated, executed its bonds to the number and amount and of the description therein stated, and also executed, duly acknowledged and delivered to the complainants, its mortgage or deed of trust, as set forth in the said bill, for the purpose of securing the payment of the principal and interest to become due on the said bonds; and also that the instalment of interest which became due and payable upon said bonds on the first day of September, 1859, was not paid by the said defendant, the La Crosse and Milwaukee Railroad Company, or by any one for it, and that the interest which has since accrued thereon has not been paid.

This defendant, further answering, states and shows to the court, that the said defendant, the La Crosse & Milwaukee Railroad Company, on or about the first day of July, 1857, for value received, duly executed its negociable promissory note, bearing date on the said first day of July, for the payment, six months after date, of the sum of twenty-five thousand dollars, with interest, which note, some time in the month of August, 1857, and before the execution and delivery of the mortgage or trust deed in the complainants' bill mentioned, for a full and valuable consideration, was purchased by and became the property of this defendant; that after the said note, by the terms thereof, became due and payable, the same being wholly unpaid, this defendant commenced an action thereon in the circuit court in and for the county of Milwaukee, in the State of Wisconsin, against the said La Crosse & Milwaukee Railroad Company; and the said company having been duly served with process and by its attorney having ap-

peared and undertaken the defence of said action, such proceedings were thereupon had that, on the first day of May, 1858, in the said circuit court, before the judge thereof, this defendant recovered judgment against the said La Crosse & Milwaukee Railroad Company for the sum of twenty-five thousand five hundred and eighty-six dollars and 78 cents damages and costs.

This defendant, further answering, states and shows to the court, that afterwards, and in the month of October, 1859, the said judgment remaining unpaid and unsatisfied to the amount of fifteen thousand four hundred sixteen and $\frac{89}{100}$ dollars, this defendant commenced an action thereon in this the district court of the United States for the district of Wisconsin against the said La Crosse and Milwaukee Railroad Company, and caused the said company to be duly served with process therein; and the said company having appeared by its attorney to defend said action, such proceedings were thereupon had that, on the 28th day of November, 1859, in the said district court, before the judge thereof, this defendant recovered a judgment against the said La Crosse and Milwaukee Railroad Company for the sum of sixteen thousand three hundred seventy-nine dollars and eighty-six cents damages and costs, which judgment, duly entered, en-
27 rolled, and recorded, still remains unreversed, unpaid, and unsatisfied, as by the records of the said district court, reference being thereto had, will more fully appear.

This defendant, further answering, states and shows to the court, that the said La Crosse & Milwaukee Railroad Company, defendant, on the said first day of September, 1857, and at the time of the execution of the several bonds and of the execution and delivery of the mortgage or trust deed, set forth in the said complainants' bill of complaint, was very largely indebted and very greatly embarrassed in its pecuniary affairs, and then was, as this defendant is informed and believes, wholly insolvent and unable to pay its debts.

This defendant, further answering, states and shows to the court, upon information and belief, that the said trust deed or mortgage and the said one thousand bonds, to which the same is collateral security, was gotten up, contrived, and executed by the said railroad company, when the said company was well known to its board of directors to be greatly embarrassed in its pecuniary condition and affairs, for the corrupt and fraudulent purpose of disposing of said bonds, or a large part thereof, in payment of pretended debts to the officers and agents of said company or their friends, without any consideration to be paid therefor or in exchange for the stock of said company, then of little or no value, held by its officers and agents or their friends; and that, in point of fact, a large part of said bonds were so disposed of and given away in violation of the true intent and meaning of the charter of said company, in fraud of its creditors and of this defendant in particular; that two hundred of said bonds, being those numbered from 651 to 875 inclusive, and from 851 to 875 inclusive, were delivered or given to the defendant, Selah Chamberlain, in pretended payment or satisfaction of a claim of said Chamberlain for services rendered to said company, or for damages sustained by him by reason of the breaking up or surrender of a contract or contracts between

him and said company, which claim was wholly fictitious or was greatly over estimated for the fraudulent purpose of enabling him to receive and hold said bonds; and this defendant insists that said two hundred bonds ought to be surrendered and cancelled; that one hundred of said bonds were given to Seth R. Foster, of the city of New York, as a security for a pretended indebtedness of said company to him, but that, in truth and in fact, said company was not indebted to said Foster, on a fair settlement of accounts, in any sum whatever, but that said Foster was largely indebted to said company; and that said bonds were so delivered to him, without any good or valuable consideration, but fraudulently and ought, as this defendant insists, to be surrendered and cancelled; that about fifty-five of said bonds were delivered to the said complainant, James T. Soutter, either without any consideration at all or as collateral security to or in exchange for certain bonds of the said company theretofore issued corruptly and fraudulently and without legal authority by said company,
28 and popularly known as "corruption bonds," or "Barstow bonds," and that said Soutter gave no valid or valuable consideration therefor, but that the said transfer to him of the said fifty-five bonds was fraudulent, and the said fifty-five bonds ought to be surrendered and cancelled; that fifteen of said bonds were delivered to the complainant, Greene C. Bronson, in exchange for stock of the said company, and was pretended to have been sold to him for the stock of said company, which stock was at the time nearly or wholly worthless; and this defendant insists that neither the said company nor its directors, officers, or agents had any authority, power, or right whatever to purchase from said Bronson said stock for or on behalf of said company and pay therefor with money, or property, or bonds of said company, and that said pretended sale of said fifteen bonds to said Bronson was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled; that about six hundred of said bonds were sold and disposed of at the nominal price of 80 cents on the dollar, as follows, viz: forty cents on the dollar of the amount specified in the said bonds, respectively, was to be paid in money and forty cents on the dollar of said amount in the bonds of said company, known as aforesaid as "Barstow bonds," or in the said bonds known as "corruption bonds," or in the stock of said company; and that the said company received for said six hundred bonds only about one hundred and ninety thousand dollars in cash, and that it received in said bonds known as "Barstow bonds" and "corruption bonds," and mostly in said Barstow bonds, so-called, about one hundred thousand dollars, and the remainder, to make up said eighty cents on the dollar, in the stock of said company; and this defendant insists that neither the said company nor its directors, officers, or agents had any authority, power, or right to sell said bonds and receive the capital stock of said company in part payment therefor, and that all of said six hundred bonds, disposed of as aforesaid, are fraudulent and void and ought to be surrendered and cancelled.

This defendant, further answering, states and shows to the court, that he admits that the said La Crosse & Milwaukee Railroad Company, on or about the 27th day of September, 1857, executed and de-

livered to the defendant, Selah Chamberlain, the said instrument in writing, called a lease, as set forth in the complainants' said bill of complaint, and of which a copy is annexed to said bill of complaint: that, in and by said lease, the said Chamberlain was required, among other things, to provide for and pay the accruing interest on the one thousand bonds described in said bill, whenever and as often as any instalment thereof should become due; that the said company, immediately after the execution of said lease, put the said Chamberlain in possession of its line of railroad from Milwaukee to La Crosse and all its lands, fixtures, rolling stock, and personal property used or connected therewith, and that said Chamberlain, ever since that time, has had, and still has possession of the same; and that the said
29 company, at the time of executing the said lease, was entirely and hopelessly bankrupt, as stated in said bill of complaint; but this defendant is advised and believes, and therefore states and insists, that La Crosse and Milwaukee Railroad Company had no lawful power or authority to make said lease or conveyance, and that the same is void in law; and that the said company, being at the time indebted to this defendant and other creditors, and wholly insolvent, as aforesaid, and wholly unable to carry on the construction of its road, made said lease or conveyance to said Selah, as the said Selah then well knew, with the intent and purpose to hinder, delay, and keep off its said creditors, while, through the agency of the said Selah, as its pretended lessee, it could carry on the construction of its railroad, direct and control its management and receive the income, tolls, and profits of its business, and thus prevent the attachment of its property and the interruption of its operations it then apprehended from its creditors; and that said lease was made and delivered to the said Selah, at the day of its date, with the intent and purpose on the part of the said company of hindering and delaying and defrauding its creditors, as the said Selah then well knew; and that the said Selah, fraudulently designing and intending to aid the said company in thus hindering, delaying, and defrauding its creditors, entered into and accepted said lease from said company; and that said lease, or conveyance in writing, is therefore void in law, and of no effect as against this defendant, a creditor of said company; and this defendant further, in like manner, states and insists that said lease and the possession and control of said company's railroad and property under the same, acquired by said Selah as aforesaid, has hindered and delayed, and does still hinder and delay the creditors of said company unreasonably in the enforcement and collection of their rights, debts, and damages against the said company, and creates trusts for the benefit of said company to an unlimited amount, and that the same is therefore void in law as against this plaintiff, a creditor of said company, without regard to the intention and design of the parties to said lease or conveyance in writing.

This defendant, further answering, states and shows to the court, that in this the district court of the United States for the district of Wisconsin, on the second day of October, 1857, the said La Crosse & Milwaukee Railroad Company, further designing to hinder, delay, and defraud its creditors of the enforcement of their rights, debts,

and damages against it, and to aid, brace up, and give additional color to the right of said Selah Chamberlain, under said pretended lease, and thus enable the said Chamberlain more successfuly and certainly to aid the said company in its fraudulent design of hindering, delaying and defrauding its creditors, as aforesaid, did confess to said Selah, and suffer to pass against it, a judgment in his favor and against said company for the sum of six hundred and twenty-nine thousand eighty-nine dollars and 72 cents damages, and fifteen dollars and 50 cents costs; which said judgment, fraudulently confessed and suffered, as aforesaid, was in form regularly docketed in said court on the day and year last aforesaid; and that the said Selah sought the said judgment to aid him in his possession and claim of right under said lease, before then known to him to be fraudulent, as aforesaid; and that said company was not at the time indebted to him, said Chamberlain, in any such sum as the amount of said judgment, but that a large sum, to wit, two hundred thousand dollars, part of the pretended debt or claim on which said judgment was confessed and suffered, as aforesaid, was wholly fictitious, as the said Selah well knew; and that said Selah well knew when the said judgment was confessed and suffered, as aforesaid, that the said company intended thereby to hinder, delay, and defraud its creditors, and that the said judgment is, for these reasons, void in law as against this defendant, who is a creditor of this company, as aforesaid.

This defendant, further answering, states and shows to the court, upon information and belief, that the said Selah Chamberlain, ever since he entered into possession of the said railroad, as aforesaid, has taken and received, and is now taking and receiving, all the tolls and profits, income and revenue of said company's railroad and other property, described in said lease or conveyance in writing; and that he has taken and received, under said pretended lease, of tolls, income, and revenue of said railroad and property, a large amount of money over and above the actual and necessary expenses of operating said railroad and keeping the same in repair, more than sufficient to pay the accruing interest upon the several mortgages in said lease specified, including the mortgage or trust deed to the said complainants, and also to pay and satisfy the said judgment of this defendant, so as aforesaid rendered and now remaining unpaid and unsatisfied of record in this court; and that said Chamberlain received during the months of September, October, and November, 1859, of such tolls, income, and revenue, over sixty thousand dollars, over and above the current expenses of running and operating said railroad during said three months, all of which was nett profits, and which sum, or so much thereof as might be necessary or proper, he, the said Chamberlain, was bound by the terms of said lease to use and apply in paying the interest due and unpaid upon the bonds described and set forth in the complainants' said bill of complaint, and ought in justice to have applied in payment of this defendant's said judgment; but that the said Chamberlain, willfully and fraudulently, has neglected and refused to pay this defendant's said judgment, as well as the said interest so due as aforesaid upon the said bonds, and has applied the said moneys in payment of pretended debts due to him by said company

and secured by said fraudulent lease and judgment, or has used and applied said moneys for his private purposes in fraud of this defendant and the other creditors of said compnay.

This defendant, further answering, states and shows to the court, upon information and belief, that the said defendant, Chamberlain, with the fraudulent intent further to hinder, delay, and injure the creditors of said railroad company, and further to maintain,
31 secure, and provide for his said pretended claims, rights, and interest under the said lease and judgment, did designedly neglect and omit to pay the interest due on the first day of September, 1859, on the one thousand bonds mentioned in the complainants' said bill of ocmplaint, he, the said Chamberlain, having received from the tolls, income, and revenue of said company, and then having in his hands, sufficient monies to pay the whole amount of said interest, and that afterwards, and on or about the 20th day of November, 1859, the said Chamberlain did fraudulently contrive and combine with said complainants, or with one Prentiss Dow, the agent of said complainants, and also of a part of said bondholders, and with the knowledge and approval of said complainants, to make the non-payment of the said interest the ground and occasion for instituting the present action and foreclosing the said mortgage or trust deed, executed as aforesaid to the said complainants, and to effect and procure a sale of the said railroad with all its property, rights, and franchises, conveyed or purporting to be conveyed by said mortgage or trust deed, for the joint benefit, advantage, and profit of the said Chamberlain, the said complainants, and the holders of about 600 of the bonds secured by said trust deed; and that with like fraudulent intent and purpose the said Chamberlain, on or about the 20th day of November, 1859, at the city of Milwaukee, did make and enter into an agreement, in writing, with the said complainants, or with their agent, Prentiss Dow, and with the holders and owners of about six hundred of the said bonds, who were represented by the said Dow, with the knowledge and approval of the said complainants, of the particulars of which agreement this defendant has not been informed, but the substance and effect of which was, as this defendant is informed and believes, that the said Chamberlain should aid and assist the said complainants in the prosecution of the present action to foreclose the said trust deed or mortgage, and in procuring a decree of this court for the sale of the mortgaged premises, and that at such sale the said Chamberlain should bid in and purchase the mortgaged premises, at the lowest price and sum practicable, and take a deed of the same in his own name, and that the title to all the property, rights, and franchises acquired by him, under the said decree and by means of said purchase, should be taken and held by him, according to the terms of said agreement, for the joint benefit, profit, and advantage of him, the said Chamberlain, and the said bondholders represented by the said Prentiss Dow, without requiring the full amount or any considerable part of said bid to be paid in money; and that under and by virtue of said purchase the said Chamberlain should be allowed or secured a large share or interest in the said property, rights, and franchises, in payment or satisfaction for his aforesaid fraudulent

and pretended claims, rights, and interests under and by virtue of the aforesaid fraudulent lease and judgment.

This defendant, further answering, states and shows to the court, upon information and belief, that since the date of the said agreement, by and with the aid and procurement of the said Chamberlain and his retained agents, solicitors, and counsel, the present
32 action has been commenced; and that the said Chamberlain has employed, among others, the law firm of Finches, Linde & Miller, and paid them a retaining fee of five hundred dollars, to aid in the prosecution of this action and secure the foreclosure of said mortgage or trust deed, and the sale of the mortgaged premises, and that the same was done with the corrupt and fraudulent intent and purpose of hindering, delaying, defrauding, and cutting off this defendant and all other creditors of said company whose liens are subsequent to the lien of said mortgage or trust deed, and to secure to himself a large share or interest in the mortgaged premises, after such sale, in payment or satisfaction of his said pretended claims, rights, and interest under said fraudulent lease and judgment, in pursuance of the aforesaid written agreement, or of some other corrupt and fraudulent arrangement, by which the said Chamberlain was to acquire and have the same benefits and advantages above stated, in respect to his fraudulent claims under said lease and judgment.

This defendant, further answering, says that he is advised and believes, and therefore insists, that the present action has been procured to be commenced and is prosecuted by fraudulent and corrupt means and for fraudulent purposes, and is oppressive and unjust, as against this defendant; that the money and means in the hands of the said Chamberlain, belonging to the said La Crosse & Milwaukee Railroad Company, ought to be applied to the payment of the interest due and to become due on the bonds mentioned and described in the complainants' bill of complaint, so far as the said bonds or any of them shall be adjudged legal and valid; and that a receiver ought to be appointed by this court, with the usual and proper powers, to take charge of the railroad and all the property conveyed in and by said mortgage or trust deed, and to hold, manage, and operate said railroad and property, to receive the tolls, income, and profits thereof, and after paying the necessary expenses for repairs, and for running, managing, and operating said railroad, to pay the residue of all such receipts into this court, to be disposed of as may be just and equitable and as this court shall direct. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct; and hereby prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

SEBRE HOWARD,
LEVI HUBBELL,
*Sol'r for Def't.*

LEVI HUBBELL, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

On this fourth day of February, 1860, before me personally came Sebre Howard, the defendant named in the foregoing answer, who,

being by me duly sworn, did depose and say that he had read the said answer and knew the contents thereof, and that the same was true of his own knowledge. Except as to the matters therein stated upon information and belief, and that as to those matters he believes said answers to be true.

J. M. MILLER,
*Clerk and U. S. Com'r, Dist. of Wis'n.*

33 *Demurrer.*

And afterwards, to wit: on the 6th February, 1860, came the defendants, Avery Hill and Ephraim Mariner, by their solicitor, Mr. Mariner, and filed their demurrer as follows:

U. S. DISTRCT COURT,
*District of Wisconsin:*

The demurrer of Avery Hill and Ephraim Mariner, defendants, to the bill of complaint of Greene C. Bronson and James T. Soutter, trustees, complainants.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters in the complainants' bill to be true, in manner and form as therein alleged, demur thereto, and for cause of demurrer show—

First. That it does not appear from the said bill of complaint that the said La Crosse and Milwaukee Railroad Company, defendant, had any authority to sell its contract to pay money created by and contained in said bonds.

Second. That it does not appear from said bill that said bonds of said La Crosse and Milwaukee Railroad Company were transferred in furtherance of the object of the incorporation of said La Crosse and Milwaukee Railroad Company, nor for what purpose the same were transferred and delivered.

Third. It does not appear from said bill what portion of said bonds were sold and to whom they were sold, and what portion were transferred and delivered, nor to whom said bonds were so transferred and delivered.

E. MARINER,
*Sol'r, of Counsel for the above named Defendant.*

I hereby certify that, in my opinion, the above demurrer is well founded in point of law.

E. MARINER,
*Of Counsel for Def'ts Hill and Mariner.*

MILWAUKEE COUNTY, *ss:*

Ephraim Mariner, being duly sworn, says that the above demurrer is not interposed for the purpose of delay.

E. MARINER.

Sworn to and subscibed before me this 6th day of February, 1860.
SAMUEL S. MARINER,
*Notary Public, Milwaukee Co., Wis.*

FEBRUARY 13, 1860.

This day came the complainants by their counsel, and on motion it is ordered by the court that the demurrer to the bill be set down for hearing on the first Monday of March next.

*Petition of Rockwell.*

MARCH 5, 1860.

This day came John S. Rockwell and presented his petition in writing, setting forth that he is a stockholder and creditor of the Milwaukee and Minnesota Railroad Company, as the successor of said La Crosse and Milwaukee Railroad Company, defendant, as a holder of bonds secured by a mortgage on the road and property of said company, and that the said Milwaukee and Minnesota Railroad Company have refused to make defence, and thereby prejudice the interests of said petitioner, and prays the court to permit him to make defense to this bill in the name of said Milwaukee and Minnesota Rail-
34 road Company, defendant, which petition is as follows:

*To the Hon. A. G. Miller, judge of the United States district court for the District of Wisconsin.*

Your petitioner, John S. Rockwell, a citizen of the State of Wisconsin, respectfully represents and shows to your honor, that on or about the 27th day of September, 1856, the La Crosse and Milwaukee Railroad Company, a corporate body duly incorporated and organized under the laws of the State of Wisconsin, purchased of the Milwaukee and Watertown Railroad Company, a body corporate duly incorporated and organized under the laws of said State, all its railroad and all the real and personal property connected therewith, and thereupon, in pursuance of the laws of said State, and of a written agreement duly executed by and between the parties for that purpose, the said two companies were consolidated; that at the time of such consolidation your petitioner was the holder and owner of nineteen thousand dollars, at par, of the full paid capital stock of the said Milwaukee and Watertown Railroad Company; that in pursuance of said agreement for consolidation your petitioner, in or about the month of November, 1856, surrendered his certificates for the said stock to the said La Crosse and Milwaukee Railroad Company, and received in exchange and payment therefor the same amount, to wit, nineteen thousand dollars, in the five years seven per cent. coupon bonds of the said company, and your petitioner thereupon became a creditor of said company to the amount of nineteen thousand dollars, drawing interest at 7 per cent.

Your petitioner further represents, that in or about the month of November, 1858, the said bonds being then unpaid, your petitioner was induced by the said railroad company to surrender the same, and to accept and receive in exchange therefor an equal amount, to wit, twenty thousand dollars, in the bonds of said La Crosse and Milwaukee Railroad Company, known as 3rd mortgage bonds, bearing date on the — day of July, 1858, and secured by a mortgage or trust

deed bearing the same date, and duly executed by said company in pursuance of the powers and authority in it vested by its act of incorporation, and the acts amendatory of and supplementary to the same, and delivered to William Barnes, of the city of Albany, in New York, trustee.

Your petitioner further represents that some time in or about the month of February, 1859, the interest due upon the said 3rd mortgage bonds being unpaid, the said Barnes, trustee, instituted proceedings to foreclose the same by advertisement, and on the 21st day of May, 1859, in pursuance of the laws of the State of Wisconsin, and by virtue of the powers in him vested for that purpose, the said Barnes caused the said railroad and all the property, rights, and franchises conveyed to him in and by said mortgage or trust deed to be sold at public vendue in the city of Milwaukee; and the said Barnes, in pursuance of the act in such case made and provided, bid off and purchased the same, as trustee for the holders of the bonds secured by such mortgage or trust deed, at the nominal price
35 or sum of fifteen hundred and ninety-three thousand three hundred and thirty-three dollars and 33 cents, without paying any part thereof in money.

Your petitioner further represents that afterwards, and on the 23rd day of May, 1859, the said Barnes, trustee, having associated with him for the purpose divers other persons, interested as holders of the said bonds, did, at the city of Milwaukee, in pursuance of the laws of the State of Wisconsin in such case made and provided, duly and legally form, organize, and establish a new corporation, designated the Milwaukee and Minnesota Railroad Company, to take, hold, exercise, and enjoy all and singular the railroad, railroad property, rights, and franchises, so as aforesaid by him, said Barnes, purchased in trust for the holders of said bonds, and that thereupon a board of directors of said company was duly elected as follows: Hans Crocker, L. W. Weeks, William A. Sill, William B. Gilbert, William E. Smith, N. J. Emmons, and Russell Sage and two others; and Russell Sage was duly chosen president, N. J. Emmons, vice president, and D. W. Keyes, secretary of the said company; and the said Barnes, trustee, did, on the same day, by his deed, duly executed, sealed, acknowledged, and delivered for that purpose, and bearing date on the 23rd day of May, 1859, assign, sell, transfer, and convey unto the said Milwaukee and Minnesota Railroad Company, all and singular the railroad, railroad property, rights, and franchises of every name and description by him in trust so as aforesaid purchased; and the said railroad company then and there accepted the same; to all which doings, acts, and proceedings your petitioner, as such bondholder as aforesaid, did then and there assent.

Your petitioner further represents that, as he is advised and believes, he has an equitable interest in all the property, rights, and franchises so as aforesaid conveyed by the said Barnes, trustee, to the said Milwaukee and Minnesota Railroad Company, corresponding in amount and value to the whole thereof, as twenty thousand corresponds to fifteen hundred and ninety-three thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, being the price and sum bid by the said Barnes

therefor, and the said company now holds the title to the same as the trustee of your petitioner.

Your petitioner further represents and shows to your honor that prior to the execution of the trust deed to the said Barnes, as aforesaid, and in or about the month of September, 1857, the said La Crosse and Milwaukee Railroad Company issued its bonds to the amount of one million of dollars, dated on the first day of September, 1857, and payable with eight per cent. semi-annual interest on the first day of September, 1870; and to secure the payment of said bonds executed and delivered to Greene C. Bronson and James T. Soutter, of the city of New York, in trust, a mortgage or trust deed bearing date on the said first day of September, 1857, and conveying to the said trustees all the railroad and railroad track of the said La Crosse and Milwaukee Railroad Company between the city of Milwaukee and the city of Portage, in Wisconsin, together with all the real estate, rolling stock, personal property, rights, and fran-
36 chises of said company, belonging to or used or connected with said line of railroad.

Your petitioner further represents that the said La Crosse and Milwaukee Railroad Company at the time of the execution of the last named bonds and trust deed was, as he is informed and believes, greatly embarrassed in its pecuniary circumstances; that it had before that time, and during the years 1856 and 1857, issued and put in circulation, without lawful authority and for corrupt and unlawful purposes, a large amount, to wit, seven hundred thousand dollars, at par, of its unsecured bonds, payable with seven per cent. interest at five years from date, and popularly known as "corruption bonds;" and also a large amount, to wit, one million of dollars, at par, of like unsecured bonds, payable with seven per cent. interest, and popularly known as "Barstow bonds;" which bonds were flooding the market, greatly depreciated in value, and tended greatly to the embarrassment of said company and the annoyance of its favorite friends. And that the capital stock of said company, certificates for which to a large amount had been illegally issued, and were also flooding the market to the great annoyance of said company and its friends, was at the same time greatly reduced in value; and that the said company, with a view to relieve its friends holding said corruption bonds, or said Barstow bonds, or said stock, got up and issued said bonds of date of September first, 1857, secured as aforesaid.

Your petitioner further represents, upon information and belief, that of said million of dollars of bonds bearing date on the first day of September, 1857, two hundred of said bonds, to wit, bonds numbered from 651 to 825 inclusive, and from 851 to 875 inclusive, for one thousand dollars each, were pretended to have been sold to Selah Chamberlain, then a contractor upon said road; but that in fact said Chamberlain never paid any money for the same, and the said bonds were given to him in payment or satisfaction of a merely pretended and unliquidation claim of damages set up by him against said company for breach or non-fulfilment of contract on the part of said company; that one hundred of said bonds were delivered to Seth R. Foster, of the city of New York, as a pretended security for a debt

owing by said company to him, when in fact the said company was not indebted to said Foster in any sum whatever, but on a fair settlement of accounts the said Foster was largely indebted to said company, and that said Foster never paid any money or valuable thing for said one hundred bonds; that fifty-five of said bonds were delivered to James T. Soutter, one of said trustees, either without any consideration at all, or in exchange for the "Barstow bonds," or "corruption bonds," aforesaid, or the stock of said company; that fifteen of said bonds were delivered to Greene C. Bronson, one of said trustees, either without any consideration at all, or in exchange for the stock of said company; and that six hundred of the said bonds were pretended to have been sold by said company at 80 cents on the dollar; said eighty per cent. being paid partly in cash, but chiefly in said Barstow bonds or in said corruption bonds, and in the stock of the said company.

Your petitioner further represents and shows to your honor
37 that on or about the 27th of September, 1857, the said company being so much in debt and embarrassed in its pecuniary affairs as to be unable to prosecute the further construction of its railroad, and being threatened with judgments in favor of Newcomb Cleveland and others, made and executed to the said Selah Chamberlain a pretended lease or instrument in writing, by which the said company transferred and conveyed to him all of its personal property absolutely, and all of its railroads, tracks, right of way, and real estate for an indefinite period of time, in pretended security for a large but unsettled and undefined indebtedness of the said company to him, but in truth and in fact for the fraudulent purpose of covering up its property and continuing the construction and management of its railroad in the name of the said Chamberlain, without liability to seizure under execution or writs of attachment, and for the purpose of hindering, delaying, and defrauding its creditors, which said purposes were well known to the said Chamberlain; and that the said company, with like fraudulent intent and purpose, at or about the 27th of September, 1857, put the said Chamberlain in possession of all its railroad and all the other personal and real property described in said lease; and the said Chamberlain ever since that time has had, used, occupied, and controlled said railroad and other property, and has taken, used, and disposed of all the tolls, rents, profits, and revenues derived or accruing therefrom; that on or about the second day of October, 1857, the said railroad company, further intending to hinder, delay, and defraud its creditors, and for the purpose of aiding and bracing up its aforesaid fraudulent lease, and to give additional color of right to the claims of the said Chamberlain under the same, in this, the district court of the United States for the district of Wisconsin, did confess to said Chamberlain, and suffer to pass against it, a judgment in his favor and against the said company for the sum of six hundred and twenty-nine thousand eighty-nine dollars and 72 cents damages, and 15 dollars and 50 cents costs; which said judgment, so fraudulently confessed and suffered, was in form regularly docketed in said court on the said second day of October, 1857; and that the said Chamberlain sought and procured the said judgment to

aid him in his claim of right under the said lease, before that time known to him to be fraudulent as aforesaid, and for the purpose of aiding said company to hinder and delay its creditors; and that said judgment was confessed and suffered for a large amount, to wit, for two hundred thousand dollars, more than the said company, upon a just and fair settlement of accounts between him and said company was indebted to him.

Your petitioner further represents that in and by the said lease the said Chamberlain, among other things, was required to provide for and pay out of the tolls, income, and revenue of said railroad the semi-annual instalments of interest which should thereafter become due on the said million dollars of bonds issued by said company of the date of September first, 1857. And your petitioner represents,
38 upon information and belief, that the said Chamberlain received large sums of money from the tolls and income of said railroad and other property during the time they were so in his charge and possession under said lease, over and above the current and necessary expenses of repairs and of running or operating the same, to wit, the sum of one hundred thousand dollars per year for each year he so held the same; and that during the months of September, October, and November, 1859, he so received the sum of sixty thousand dollars and more over and above such repairs and running expenses; and that he had in his hands at all times, and now has, sufficient moneys derived from the use and occupation of said railroad and other property, to provide for and pay all the interest which has accrued upon said bonds, and particularly the instalment of interest of forty thousand dollars which became due on the first day of September, 1859.

But that the said Chamberlain, as your petitioner is informed and believes, feeling himself unsafe, as to his aforesaid pretended claims under said fraudulent lease and judgment, has entered into an agreement with the trustees under the said trust deed or mortgage, and with the holders of a large amount, to wit, about six hundred of the said bonds, one Prentiss Dow acting as the agent of said trustees and of said bondholders, in negotiating, concocting, and making said plan and agreement, whereby the said Chamberlain was to withhold and refuse payment of the interest due upon said bonds, as aforesaid, and was to aid the said trustees and the said bondholders in effecting a speedy foreclosure and sale of the mortgaged premises under said trust deed or mortgage; and the said Chamberlain was to bid off the mortgaged premises at such sale at the lowest price or sum practicable, of which no part was to be paid in money to the holders of said six hundred bonds, and was to take and hold the title and possession of the property, rights, and franchises, so purchased, for the joint benefit of him, said Chamberlain, and the holders of the said six hundred bonds; and whereby also the said Chamberlain was to have and receive a large share and interest in the property, rights, and franchises so purchased, in payment or satisfaction of his aforesaid pretended claims under the said fraudulent lease and judgment, together with his proportionate share or interest therein, under and by virtue of the said two hundred bonds, so as aforesaid given to him by the said railroad company without any consideration paid therefor.

And that, as your petitioner is informed and believes, at the city of Milwaukee, on or about the 20th November, 1859, the aforesaid fraudulent agreement was consummated and reduced to writing, and signed and executed by the said Chamberlain and the said Prentiss Dow, acting as agent as aforesaid; and that, in pursuance thereof, the said Chamberlain has neglected and refused, and still neglects and refuses, to pay the said September instalment of interest on the said bonds, he having ample means in his hands, as aforesaid, to pay the same; and that in pursuance of said agreement an action has been commenced in this court for the foreclosure of said trust deed or mortgage, by and with the aid and procurement of the said
39 Chamberlain, his solicitors and counsel; and that the said Chamberlain, among others, has employed the law firm of Finches, Lynde & Miller, and paid said firm five hundred dollars in money, to aid and assist in effecting such foreclosure and sale, with the fraudulent intent and purpose on the part of said Chamberlain to bid off and purchase the mortgaged premises and take and hold the title and possession thereof, on the aforesaid corrupt and fraudulent agreement and understanding, that he is to receive and have a large share and interest therein, in payment and satisfaction of his aforesaid fraudulent claims under said 200 bonds, and under said lease and judgment, and with the further fraudulent intent and purpose, on the part of said Chamberlain and the other parties to said agreement, that by means of such foreclosure and sale the said Milwaukee & Minnesota Railroad Company, and your petitioner, and all other creditors of said La Crosse & Milwaukee Railroad Company, whose rights, liens, and claims are subsequent in date to the said trust deed, will be hindered, delayed, and cut off in the enforcement of their said rights, liens, and claims against the said La Crosse and Milwaukee Railroad Company, and its property, rights, and franchises.

Your petitioner further represents that the said Milwaukee and Minnesota Railroad Company has been made a party defendant to the bill of complaint of the said Greene C. Bronson & James T. Soutter, trustees, for the foreclosure of said trust deed or mortgage, which was filed in this court on the 9th day of December, 1859; and that a rule to plead, answer, or demur to said bill was duly entered in said action, reduiring the defendants therein to answer said bill by the first Monday in February, 1860; but that, to the best of your petitioner's knowledge and belief, said Milwaukee & Minnesota Railroad Company, defendant, has not entered it appearance or made any answer to said bill of complaint, and does not intend to do so.

Your petitioner further represents, upon information and belief, that Russell Sage, the president of said Milwaukee & Minnesota Railroad Company, who is a resident of Troy, New York, was fully aware of the aforesaid fraudulent agreement between the said Chamberlain and the said Dow, acting as agent as aforesaid, at or about the time when the same was made, and had private and pecuniary reasons for favoring and aiding the foreclosure and sale therein contemplated, and the division of the property, so as aforesaid to be purchased by said Chamberlain, allowing to said Chamberlain the share and interest hereinbefore stated; and that N. J. Emmons, the vice-

president of said company, and who is the general counsel of said Chamberlain, was present at and aided and advised in the concoction and execution of said fraudulent agreement, and that he has private and pecuniary reasons for favoring the said foreclosure and sale, for the intents and purposes hereinbefore stated; that soon after the commencement of said action, the said Sage was written to by William E. Smith, one of the directors, and by Eliphalet Cramer, and others, largely interested as shareholders in said company, requesting and urging him to come to this State, and cause and procure said company to enter its appearance and make defence to said action; but the said Sage has replied to all such requests, declining to come or to do anything in the matter.

Your petitioner further represents that, on the 14th day of January, 1860, your petitioner, together with John H. Tweedy, Cyrus Hawley, and Eliphalet Cramer, esqs., each of whom is a shareholder in the said Milwaukee & Minnesota Railroad Company, made application in writing to N. J. Emmons, vice-president of said company, requesting and urging him, as such vice-president, in the absence from the State of Russell Sage, the president, to call a meeting of the directors of said company, to be held in this city on the 18th day of January, 1860, for the purpose of taking the necessary steps on the part of said company to make a defence to said action, and stating the reasons why such defence was deemed proper and necessary. That the said Emmons declined to call such meeting on the 18th of said month, but answered in writing, and stated to said applicants that he had called a meeting of said directors to be held in this city on the 27th day of said month, and had or would notify the president and other directors of such meeting; but your petitioner is informed by L. W. Weeks, one of the directors of said company, that he was not notified of such proposed meeting; and your petitioner is informed and believes that no such meeting was held, and that no steps or proceedings have been taken by the board of directors or any of the officers of said company to defend said action, or protect in any way the rights and of your petitioner, as such shareholder as aforesaid, therein.

Your petitioner, therefore, humbly prays your honor, in view of the facts and circumstances of the case, and of the absolute neglect and refusal of said Milwaukee and Minnesota Railroad Company and its officers, to undertake the defence of said action, on the part of said company, as a defendant therein, that your petitioner may, by a proper order made for that purpose, be let in and allowed to make such defence as he may be advised is proper or necessary, in the place of said company, as a party defendant to said action; and that he may be allowed a reasonable time to prepare and file his answer to the bill of complaint of the complainants therein.

And your petitioner, as in duty bound, will ever pray, &c.

JOHN S. ROCKWELL.

LEVI HUBBELL,
*Solicitor for Petitioner and of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

John S. Rockwell, the petitioner in the foregoing petition named, being duly sworn, deposes and says, that he has heard said petition read, and knows the contents thereof; that said petition is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters be believes the same to be true.

JOHN S. ROCKWELL.

Subscribed and sworn to before me February 4, 1860.

J. M. MILLER,
*Clerk and U. S. Com'r, Dist. of Wisconsin.*

41 *Rockwell's petition allowed.*

On consideration whereof it is ordered by the court that the said John S. Rockwell be, and hereby is, allowed to make defense to this bill in the name of said Milwaukee and Minnesota Railroad Company to the same extent as the said company could do under the rules and practice of this court, and that his plea or answer be filed by the first Monday of April next.

*Replication.*

And afterwards, to wit, on the 7th day of March, 1860, came the complainants, by their solicitor, and filed their replication to the answer of Sebre Howard as follows:

District court of the United States for the district of Wisconsin—
In chancery.

The replication of Greene C. Bronson and James T. Soutter, trustees, &c., complainants, to the separate answer of Sebre Howard, one of the defendants to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say: That they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN,
*Sol. Compl'ts.*

*Demurrer of Hill overruled.*

MARCH 9, 1860. This day the demurrer of Ephraim Mariner and Avery Hill to this bill was submitted; on consideration whereof it is ordered by the court that the said demurrer be, and hereby is, overruled, and that the said defendants file their answer to said bill by the first Monday of April next.

And afterwards, to wit, on the 26th day of March, 1860, came John S. Rockwell, by his solicitor, Mr. Hubbell, and filed his separate answer as follows:

*Rockwell's answer.*

District court of the United States, Wisconsin district.

Separate answer of John S. Rockwell, who, by the order of this court made on the 5th day of March, 1860, is allowed to make defence to the bill of complaint of Greene C. Bronson and James T. Soutter, complainants, in the name of the Milwaukee & Minnesota Railroad Company:

42 This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit of exception to the many errors and insufficiencies in the said complainants' bill of complaint contained, for answer thereto, or to so much and such parts thereof as he is advised it is material for him to make answer unto, answers and says: He admits that the defendant, the La Crosse and Milwaukee Railroad Company, at the time and in the manner in the said bill stated, executed its bonds to the number and amount and of the description therein stated, and also executed, duly acknowledged and delivered to the complainants its mortgage or deed of trust, as set forth in the said bill, for the purpose of securing the payment of the principal of the said bonds and the interest to become due thereon; and also that the instalment of interest, which became due and payable upon said bonds on the first day of September, 1859, was not paid by the said defendant, the La Crosse and Milwaukee Railroad Company, or by any one for it, and that the interest which has since accrued thereon has not been paid.

This defendant, further answering, says, that the Milwaukee and Minnesota Railroad Company is a body corporate and politic, and was duly incorporated and organized on the 23d day of May, 1859, under and by virtue of chapter 79 of the Revised Statutes of the State of Wisconsin, entitled "of Railroads," and of the acts amendatory thereof; and, as such body corporate, became and still is lawfully seized and possessed of all the real and personal property, rights, privileges, and franchises which the defendant, the La Crosse and Milwaukee Railroad Company, had, held, or was entitled to have, hold, exercise, use, or enjoy, on the 21st day of June, A. D. 1858, in respect to all that part of its railroad and the appurtenances situated in and between the city of Milwaukee and Portage City, in the State of Wisconsin, subject only to such legal liens and incumbrances as

then existed upon the same; that the said real and personal property, rights, privileges, and franchises, were of great value, and were held and estimated by the said Milwaukee and Minnesota Railroad Company at the sum and value of $1,593,333 33; and that this defendant, John S. Rockwell, on the day of the incorporation and organization of said company as aforesaid, became, and ever since that time has been, and now is, the holder and owner of a share or interest of $20,000 therein, and, as such shareholder, is directly and largely interested in protecting the said real and personal property, rights, privileges, and franchises from all unjust, inequitable, and illegal liens and claims against the same, and from all fraudulent schemes and devices to secure or enforce such liens and claims against the same.

This defendant, further answering, states and shows to the court, that the said La Crosse and Milwaukee Railroad Company, defendant, on the first day of September, 1857, and at the time of the execution of the said several bonds, and of the execution and delivery of the said mortgage or trust deed set forth in the said complainants' bill of complaint, was very largely indebted and very greatly embar-
43 rassed in its pecuniary affairs, and then was, as this defendant is informed and believes, wholly insolvent and unable to pay its debts.

This defendant, further answering, states and shows to the court, upon information and belief, that the said mortgage or trust deed, and the said one thousand bonds, to which the same is collateral security, were gotten up, contrived, and executed by the said railroad company, by its then acting board of directors, when the said company was well known to the said board to be greatly embarrassed in ts pecuniary condition and affairs, for the corrupt and fraudulent purpose of disposing of said bonds, or a large part thereof, in payment pretended debts to the officers and agents of said company or their friends, without any consideration to be paid therefor, or in exchange for the stock of said company, then of little or no value, held by its officers and agents or their friends, and that in point of fact a large part of said bonds were so disposed of or given away, in violation of the true intent and meaning of the charter of said company and the laws of said State of Wisconsin, and in fraud of the stockholders and creditors of said company; that two hundred of said bonds, being those numbered from 651 to 825, inclusive, and from 851 to 875, inclusive, were given and delivered to the defendant, Selah Chamberlain, in pretended payment or satisfaction of a claim of said Chamberlain for services rendered to said company, or for damages sustained by him for the discontinuance, breaking up, or surrender of a contract or contracts between him and said company, which claim was wholly fictitious, or was greatly overestimated, for the fraudulent purpose of enabling him to take and hold said bonds; and this defendant insists that said 200 bonds ought to be surrendered and cancelled; that one hundred of said bonds were given to Seth R. Foster, of the city of New York, as a security for a pretended indebtedness to him on the part of said company, but that in truth and in fact said company was not indebted to said Foster, on a fair settlement of accounts, in any sum whatever, but said Foster was largely

indebted to said company, and the same was well known the president and other officers of said company, and that said bonds were so delivered and given to him, fraudulently, without any good or valuable consideration therefor; and this defendant insists that the same ought to be surrendered and cancelled; that about fifty-five of said bonds were delivered to the said complainant, James T. Soutter, either without any consideration at all, or in exchange for certain bonds of the said company, theretofore issued corruptly and fraudulently and without legal authority by said company, and popularly known as "corruption bonds" and "Barstow bonds," and that said Soutter gave no valuable or valid consideration therefor, but that the said transfer to him of the said fifty-five bonds was fraudulent, and that the said 55 bonds ought to be surrendered and cancelled; that fifteen of the said bonds were delivered to the complainant, Greene C. Bronson, in exchange for the stock of said company and were pretended to have been sold to him for the stock of said company, which stock was
44 at the time nearly or wholly worthless. And this defendant insists that neither the said company nor its directors, officers, or agents had any authority, power, or right whatever to purchase from said Bronson said stock for or on behalf of said company, and pay therefor, with the money or property or bonds of the said company; and that said pretended sale of said 15 bonds to said Bronson was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled; that about six hundred of said bonds were sold and disposed of, at the nominal price of 80 cents on the dollar, as follows: forty cents on the dollar of the amounts specified in the said bonds respectively was to be paid in money, and forty cents on the dollar of said amount in the bonds of said company, known, as aforesaid, as "Barstow bonds," or the said bonds known as "corruption bonds," or in the stock of said company, and that the said company received for said six hundred bonds only about one hundred and ninety thousand dollars in cash, and that it received in the said bonds, known as "Barstow bonds" or "corruption bonds," and mostly in said "Barstow bonds," so called, about one hundred thousand dollars, and the remainder, to make up said eighty cents on the dollar, in the stock of said company; and this defendant insists that neither the said company nor its directors, officers, or agents had any authority, power, or right to sell said bonds and receive the depreciated capital stock of said company in part payment therefor, and that all of said six hundred bonds disposed of as aforesaid, are fraudulent and void, and ought to be surrendered and cancelled: And this defendant charges and avers the fact to be that the aforesaid several parcels of said bonds so, as aforesaid, issued, transferred, sold, given away, or delivered, were so fraudulently issued, transferred, sold, given away, or delivered by the board of directors, or by the officers or agents of said company, without lawful right or authority to bind the company in that respect, and that said bonds are wholly void in whomsoever hands they may be, and said company is not bound in law to pay the same or the interest accrued or to accrue thereon.

This defendant, further answering, states and shows to the court, that he admits that the said La Crosse and Milwaukee Rrailroad Com-

pany, by its board of directors, on or about the 27th day of September, 1857, executed and delivered to the defendant, Selah Chamberlain, the said instrument in writing called a lease, as set forth in the complainants' said bill of complaint, and of which a copy is annexed to said bill of complaint; that in and by said lease the said Chamberlain was required, among other things, to provide for and pay the accruing interest on the 1,000 bonds described in the said bill, whenever and as often as any instalment thereof should become due; that the said board of directors, immediately after the execution of said lease, put the said Selah Chamberlain in possession of its line of railroad from Milwaukee to La Crosse, and all its lands, fixtures, rolling stock, and personal property used or connected therewith; and that said Chamberlain, ever since that time, has had and still has possession of the same; and that the said company, at the time of executing
45 said lease, was entirely and hopelessly bankrupt, as stated in said bill of complaint; but this defendant is advised and believes, and therefore states and insists, that the said La Crosse and Milwaukee Railroad Company had no lawful power or authority to make said lease or conveyance, and that the same is void in law; and this defendant states, upon information and belief, that the said company being, at the time, wholly insolvent as aforesaid, and wholly unable to carry on the construction of its road, or to operate and manage the parts thereof which were then completed, its board of directors made the said lease to the said Chamberlain, as he, said Chamberlain, then well knew, with the express intent and purpose to hinder, delay, and keep off its creditors, while, through the agency of the said Chamberlain, as its pretended lessee, it could carry on the construction of its railroad, direct and control its management, and receive the income tolls and profits of its business, and thus prevent or avoid the attachment of its property and the interruption of its operations, which said board of directors then apprehended from its creditors; and that said lease was made and delivered to the said Chamberlain at the day of its date, with the intent and purpose on the part of the said board of directors, acting for said company, of hindering, delaying, and defrauding its creditors, as the said Chamberlain then well knew; and that the said Chamberlain, frudulently designing and intending to aid the said board of directors and said company in thus hindering, delaying, and defrauding its creditors, entered into and accepted said lease from said board of directors; and this defendant therefore insists that said lease is fraudulent in fact and in law, and is of no binding effect as against said company, its stockholders and creditors.

And this defendant further, in like manner, states and insists that said lease, and the possession *and the possession* and control of the said company's railroad rights, franchises, and property, under the same, acquired by the said Chamberlain as aforesaid, has hindered and delayed, and does hinder and delay, the creditors of said company unreasonably in the collection and enforcement of their rights, debts, and damages against the said company, and creates trusts for the benefit of said company to an unlimited amount, and that the same is therefore void in law as against this defendant and the creditors of said company,

without regard to the intention or designs of the parties to said lease or instrument in writing.

This defendant, further answering, states and shows to the court, that in this, the district court of the United States for the district of Wisconsin, on the second day of October, 1857, the said La Crosse and Milwaukee Railroad Company, by its board of directors then acting for it, the said board of directors further designing to hinder, delay, and defraud its creditors of the enforcement of their rights, debts, and damages against it, and to aid, brace up, and give additional color to the rights of said Selah Chamberlain under said pretended lease, and thus enable him the more successfully and certainly to aid the said board of directors in their fraudulent design to hinder, delay, and defraud the creditors of said company, as aforesaid, did confess to said Chamberlain, and suffer to pass against it, a
46 judgment in his favor and against said company, for the sum of six hundred and twenty-nine thousand eighty-nine dollars and 72 cents damages, and 15 dollars and 50 cents costs; which said judgment, fraudulently suffered and confessed as aforesaid, was in form regularly docketed in said court on the day and year last aforesaid; and that the said Chamberlain sought the said judgment to aid him in his possession and claim of right under said lease, before then known to him to be fraudulent, as aforesaid, and that said company was not at the time indebted to him, said Chamberlain, in any such sum as the amount of said judgment, but that a large sum, to wit, two hundred thousand dollars, part of the pretended debt and claim on which said judgment was confessed and suffered, as aforesaid, was wholly fictitious, as the said Chamberlain well knew; and that the said Chamberlain well knew, when the said judgment was confessed and suffered as aforesaid, that the said company, by its said board of directors, intended thereby to hinder, delay, and defraud its creditors; and that the said judgment is therefore fraudulent in law, as against this defendant and the creditors of said company.

This defendant, further answering, states and shows to the court, upon information and belief, that the said Selah Chamberlain, ever since he entered into possession of the said railroad as aforesaid, has taken and received, and is now taking and receiving, all the tolls and profits, income and revenue of said company's railroad and other property described in said lease or conveyance in writing; and that he has taken and received, under said pretended lease of such tolls, income, and revenue, a large amount of money over and above the actual and necessary expenses of operating the said railroad and keeping the same in repair—more than sufficient to pay the accruing interest upon the several mortgages in said lease specified, including the said mortgage or trust deed of the said complainants; and that said Chamberlain received during the months of September, October, and November, 1859, of such tolls, income, and revenue, over sixty thousand dollars per month over and above the current expenses of running and operating the said railroad during the said three months, all of which was nett profits, and all of which, or so much thereof as was necessary or proper, he, the said Chamberlain, was bound by the terms of said lease to use and apply in paying interest due and un-

paid upon the bonds described and set forth in the complainants' said bill of complaint; but that the said Chamberlain has wilfully and fraudulently neglected so to pay the interest due upon the said bonds, and has used and applied the said monies in payment of the pretended debts so as aforesaid secured to him, by said lease and judgment, or has retained the same fraudulently for private purposes of his own.

This defendant, further answering, states and shows to the court, upon information and belief, that the said defendant, Chamberlain, with the fraudulent intent further to hinder and delay the creditors of the said company, and further to maintain, secure, and provide for his said pretended claims, rights, and interests under the said lease and judgment, did designedly neglect and omit to pay the in-
47 terest due on the first day of September, 1859, on the 1,000 bonds mentioned in the complainants' said bill of complaint, he, the said Chamberlain, having received from the said tolls, income, and revenue of said company, and then having in his hands, sufficient money to pay the whole amount of said interest; and that afterwards, and on or about the 20th day of November, 1859, the said Chamberlain did fraudulently contrive and combine with said complainants, or with one Prentiss Dow, the agent of said complainants, and also the agent of the holders of about 600 of said bonds, and with the knowledge and approval of said complainants, to make the non payment of the said interest the ground and occasion for the instituting of the present action and the foreclosing of said mortgage or trust deed, executed as aforesaid to the said complainants, and to procure and effect a sale of the said railroad, with all its property, rights, and franchises conveyed or purporting to be conveyed by said mortgage or trust deed for the joint benefit, advantage, and profit of the said Chamberlain, the said complainants, and the holders of the said six hundred of the bonds secured by said trust deed; and that, with like fraudulent intent and purpose, the said Chamberlain, on or about the 20th day of November, 1859, at the city of Milwaukee, did make and enter into an agreement in writing with the said complainants, or with their agent, Prentiss Dow, and with the holders and owners of about 600 of the said bonds, who were represented by the said Dow, with the knowledge and approval of the said complainants, of the particulars of which agreement this defendant has not been informed, but the substance and effect of which was, as this defendant is informed and believes, that the said Chamberlain should aid and assist the said complainants in the prosecution of the present or a similar action, to foreclose the said trust deed or mortgage, and in procuring a decree of this court for the sale of the mortgaged premises and that, at such sale, the said Chamberlain should bid in and purchase the mortgaged premises, at the lowest price and sum practicable, and take a deed of the same in his own name, and that the title to all the property, rights, and franchises acquired by him under the said decree and by means of said purchase, should be taken and held by him, according to the terms of said agreement, for the joint benefit, profit, and advantage of him, the said Chamberlain, and the bondholders represented by the said Prentiss Dow, without requiring the full amount or any considerable part of said bid to be paid in money; and that under and by virtue

of said purchase, the said Chamberlain should be allowed or secured a large share or interest in the said property, rights, and franchises in payment or satisfaction for his aforesaid fraudulent and pretended claims, rights, and interest under and by virtue of the aforesaid fraudulent lease and judgment.

This defendant, further answering, states and shows to the court, upon information and belief, that the said Chamberlain, having in his possession or under his control sufficient moneys derived and received by him from the tolls, income, and revenue of said railroad, as hereinbefore stated, has, since the said 20th day of November, 1859, wilfully and designedly omitted and refused to pay the said September instalment of interest on the said 1,000 bonds for the purpose of
43 aiding and effecting the aforesaid fraudulent scheme of foreclosing the said trust deed or mortgage, and securing to himself and his said associates the exclusive possession and ownership of the mortgaged property, rights, and franchises, in fraud of the rights of this defendant and all other parties having rights or claims in or to the same; and that, in pursuance of the said fraudulent agreement and by and with the aid and connivance of the said Chamberlain, the present action has been commenced and is now being prosecuted; and that the said Chamberlain has employed and enlisted therein learned and able counsel, and among others, has employed the firm of Finches, Lynde & Miller, and paid them a retaining fee of five hundred dollasr out of the income of said railroad to aid in the prosecution of said action and secure the speedy foreclosure of said mortgage or trust deed and the sale of the mortgaged premises, as aforesaid, and that the same has been done with the fraudulent intent of hindering, delaying, and cutting off this defendant and all other creditors of said La Crosse and Milwaukee Railroad Company whose liens are subsequent to the date of said trust deed or mortgage, and to secure to himself a large share or interest in the mortgaged premises, after such sale, in payment or satisfaction of his said pretended rights and interests under said fraudulent lease and judgment; and that the same has been done in pursuance of the aforesaid written agreement or of some other corrupt and fraudulent arrangement between the said Chamberlain and said Dow, by which the said Chamberlain is to acquire and have the same benefit and advantage above set forth, in respect to his said fraudulent lease and judgment, as the result of said foreclosure and sale.

This defendant, further answering, says, that he is advised and believes, and therefore insists, that the present action has been procured to be commenced and is prosecuted by corrupt and fraudulent means and for fraudulent purposes, and is oppresive and unjust as against this defendant; that the money and means in the hands of the said Chamberlain, belonging to the said La Crosse and Milwaukee Railroad Company, ought to be applied to the payment of the interest due and to become due on the bonds mentioned and described in the complainants' bill of complaint, so far as the said bonds, or any of them, shall be adjudged legal and valid; and that a receiver ought to be appointed by this court, with the usual and proper powers, to take charge of the railroad and all the property conveyed in and by the

said mortgage or trust deed, and to hold, manage, and operate said railroad and property, to receive the tolls, income, and profits thereof, and after paying the necessary expenses for repairs, and for running, managing, and operating said railroad, to pay the residue of all such receipts into this court, to be disposed of as may be just and equitable and as this court shall direct.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in that behalf most wronfully sustained.

JOHN S. ROCKWELL.

49 LEVI HUBBELL, deft's sol'r,
MAT H. CARPENTER, of counsel.

DISTRICT OF WISCONSIN, *ss:*

On this 26th day of March, 1860, personally came before me John S. Rockwell, to me known to be the defendant named in the foregoing answer, who being by me duly sworn, did depose and say that he had heard the foregoing answer read and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes said answer to be true.

J. M. MILLER,
*Clerk, &c., Wis. Dist.*

And afterwards, to wit, on the 27th day of March, 1860, came the defendants, Lawrence G. Graham and Donald D. Scott, by their solicitors, Messrs. Carpenter & Gridley, and filed their answer as follows:

*Answer of Graham & Scott.*

District court of the United States for the district of Wisconsin.

The separate answer of Lawrence G. Graham & Donald D. Scott, two of the defendants to the bill of complaint of Green C. Bronson & James T. Soutter, complainants.

These defendants, now, and at all times hereafter, saving and reserving to themselves all manner of benefit of exception to the many errors and insufficiencies in the said complainants' bill of complaint contained, for answer thereto, or to so much and such parts thereof as they are advised it is material for them to make answer unto, they answer and say, they admit that the defendant, the La Crosse & Milwaukee Railroad Company, at the time and in the manner in said bill stated, executed its bonds to the number and amount and of the description therein stated, and also executed, duly acknowledged, and delivered to the complainants, its mortgage or deed of trust, as set forth in the said bill, for the purpose of securing the payment of the principal and interest to become due on the said bonds; and also that the instalment of interest which became due and payable upon on the first day of September, 1859, was not paid by the said defendant, the

La Crosse & Milwaukee Railroad Company, or by any one for it, and that the interest which has accrued thereon has not been paid.

These defendants, further answering, state and show to this court, that the said defendant, the La Crosse & Milwaukee Railroad Company, being largely indebted to these defendants on the 1st day of October, 1857, for value received, duly executed and delivered to these defendants its three certain promissory notes in writing, for value received, bearing date on the said 1st day of October, 1857; No. 463, for $10,000; No. 465, for $9,767 $\frac{67}{100}$, and No. 464, for $10,000, and before the execution and delivery of the mortgage and trust deed in the complainants' bill mentioned; and that after said notes became due and payable and remaining unpaid these defend. commenced an action thereon in the circuit court of the county of Milwaukee,
50 in the State of Wisconsin, against the said defendants, the La Crosse & Milwaukee Railroad Company, and that such proceedings were thereupon had that afterwards, and on the 25th day of November, 1858, in the said circuit court, before the judge thereof, these defendants recovered judgment against the said defendant, the La Crosse & Milwaukee Railroad Company, for the sum of twenty-nine thousand eight hundred and twenty dollars and seventy-one cents damages and costs.

These defendants, further answering, state and show to this court, that the said defendant, the La Crosse & Milwaukee Railroad Company, being further indebted to these defendants on the 1st day of October, A. D. 1857, for value received, duly executed and delivered to these defendants their certain other promissory note in writing, bearing date on the said 1st day of October, 1857, No. 462, for ten thousand dollars, ($10,000,) and before the execution and delivery of the mortgage and trust deed in the complainants' bill mentioned; and that after said note became due and payable and remaining unpaid these defendants commenced an action thereon in the circuit court of the county of Milwaukee, in the State of Wisconsin, against the said defendant, the La Crosse & Milwaukee Railroad Company, and that such proceedings were thereupon had that afterwards, and on the 21st day of September, 1858, in the said circuit court, before the judge thereof, these defendants recovered judgment thereon against the said defendant, the La Crosse & Milwaukee Railroad Company, for the sum of eleven thousand one hundred and eighty-eight dollars and fifteen cents damages and costs.

These defendants, further answering, state and show to the court, that afterwards, and in the month of December, 1859, the said judgments remaining unpaid and unsatisfied to the amount of forty-one thousand and eight dollars and eighty-six cents, these defendants commenced an action thereon in this the district court of the United States for the district of Wisconsin against the said the La Crosse & Milwaukee Railroad Company, and caused the said company to be duly served with process therein, and such proceedings were thereupon had that, on the 11th day of January, A. D. 1860, in the said district court, before the judge thereof, these defendants recovered a judgment against the said La Crosse & Milwaukee Railroad Company for the sum of forty-four thousand four hundred and thirteen dollars and

eighteen cents damages and costs, which judgment, duly entered, enrolled, and recorded, still remains unreversed, unpaid, and unsatisfied, as by the records of said district court, reference being thereto had, will more fully appear.

These defendants, further answering, state and show to the court, that the said La Crosse & Milwaukee Railroad Company, defendant, on the said first day of September, 1857, and at the time of the execution of the several bonds, and of the execution and delivery of the mortgage or trust deed set forth in the said complainants' bill of complaint, was very largely indebted and very greatly embarrassed in its pecuniary affairs, and then was, as these defendants are informed and believe, wholly insolvent and unable to pay its debts.

These defendants, further answering, state and show to the court, upon information and belief, that the said trust deed or mortgage
51 and the said one thousand bond, to which the same is collateral security, was gotten up, contrived, and executed by the said railroad company, when the said company was well known to its board of directors to be greatly embarrassed in its pecuniary condition and affairs, for the corrupt and fraudulent purpose of disposing of said bonds, or a large part thereof, in payment of pretended debts to the officers and agents of said company, or their friends, without any consideration to be paid therefor, or in exchange for the stock of said company, then of little or no value, held by its officers and agents, or their friends; and that, in point of fact, a large part of said bonds were so disposed of and given away in violation of the true intent and meaning of the charter of said company, in fraud of its creditors and of these defendants in particular; that two hundred of said bonds, being those numbered from 651 to 825, inclusive, and from 851 to 875, inclusive, were delivered or given to the defendant, Selah Chamberlain, in pretended payment or satisfaction of a claim of said Chamberlain for services rendered to said company, or for damages sustained by him by reason of the breaking up or surrender of a contract or contracts between him and said company, which claim was wholly fictitious or was greatly overestimated for the fraudulent purpose of enabling him to receive and hold said bonds, and these defendants insist that said two hundred bonds ought to be surrendered and cancelled; that one hundred of said bonds were given to Seth R. Foster, of the city of New York, as a security for a pretended indebtedness of said company to him, but that in truth and in fact said company was not indebted to said Foster, on a fair settlement of accounts, in any sum whatever, but that said Foster was largely indebted to said company; and that said bonds were so delivered to him, without any good or valuable consideration but fraudulently and ought, as these defendants insist, to be surrendered and cancelled; that about fifty-five of said bonds were delivered to the said complainant, James T. Soutter, either without any consideration at all or as collateral security to or in exchange for certain bonds of the said company theretofore issued corruptly and fraudulently and without legal authority by said company, and popularly known as "corruption bonds," or "Barstow bonds," and that said Soutter gave no valid or valuable consideration therefor, but that the said transfer to him of the said fifty-five bonds

was fraudulent, and that the said fifty-five bonds ought to be surrendered and cancelled; that fifteen of said bonds were delivered to the complainant, Greene C. Bronson, in exchange for stock of the said company, and were pretended to have been sold to him for the stock of said company, which stock was at the time nearly or wholly worthless; and these defendants insist that neither the said company nor its directors, officers, or agents had any authority, power, or right whatever to purchase from said Bronson said stock for or on behalf of said company and pay therefor with money, or property, or bonds of said company, and that said pretended sale of said fifteen bonds to said Bronson was illegal and fraudulent and that said bonds
52 ought to be surrendered and cancelled; that about six hundred of said bonds were sold and disposed of at the nominal price of 80 cents on the dollar, as follows, viz: forty cents on the dollar of the amount specified in the said bonds, respectively, was to be paid in money and forty cents on the dollar of said amount in the bonds of said company, known, as aforesaid, as "Barstow bonds," or in the said bonds known as "corruption bonds," or in the stock of said company, and that the said company received for said six hundred bonds only about one hundred and ninety thousand dollars in cash, and that it received in said bonds, known as "Barstow bonds" and "corruption bonds," and mostly in said Barstow bonds, so called, about one hundred thousand dollars, and the remainder, to make up said eighty cents on the dollar, in the stock of said company; and these defendants insist that neither the said company nor its directors, officers, or agents had any authority, power, or right to sell said bonds and receive the capital stock of said company in part payment therefor, and that all of said six hundred bonds disposed of as aforesaid are fraudulent and void, and ought to be surrendered and cancelled.

These defendants, further answering, state and show to the court that they admit that the said La Crosse & Milwaukee Railroad Company, on or about the 27th day of September, 1857, executed and delivered to the defendant, Selah Chamberlain, the said instrument in writing called a lease, as set forth in the complainants' said bill of complaint, and of which a copy is annexed to said bill of complaint; that in and by said lease the said Chamberlain was required, among other things, to provide for and pay the accruing interest on the one thousand bonds described in said bill, whenever and as often as any instalment thereof should become due; that the said company, immediately after the execution of said lease, put the said Chamberlain in possession of its line of railroad from Milwaukee to La Crosse, and all its lands, fixtures, rolling stock, and personal property used or connected therewith, and that said Chamberlain ever since that time has had and still has possession of the same; and that the said company, at the time of executing the said lease, was entirely and hopelessly bankrupt, as stated in said bill of complaint; but these defendants are advised and believe, and therefore state and insist, that the La Crosse and Milwaukee Railroad Company had no lawful power or authority to make said lease or conveyance, and that the same is void in law; and that the said company, being at the time indebted to these defendants, and other creditors, and wholly insolv-

ent, as aforesaid, and wholly unable to carry on the construction of its road, made said lease or conveyance to said Selah, as the said Selah then well knew, with the intent and purpose to hinder, delay, and keep off its said creditors, while, through the agency of the said Selah, as its pretended lessee, it could carry on the construction of its railroad, direct and control its management, and receive the income, tolls, and profits of its business, and thus prevent the attachment of its property and the interruption of its operations it then apprehended from its creditors; and that said lease was made and delivered
53 to the said Selah, at the day of its date, with the intent and purpose, on the part of the said company, of hindering, and delaying, and defrauding its creditors, as the said Selah then well knew; and that the said Selah, fraudulently designing and intending to aid the said company in thus hindering, delaying, and defrauding its creditors, entered into and accepted said lease from said company; and that said lease or conveyance in writing is therefore void in law, and of no effect as against these defendants as creditors of said company; and these defendants further, in like manner, state and insist that said lease, and the possession and control of said company's railroad and property under the same, acquired by said Selah, as aforesaid, has hindered and delayed, and does still hinder and delay, the creditors of said company, unreasonably, in the enforcement and collection of their rights, debts, and damages against the said company, and creates trusts for the benefit of said company to an unlimited amount, and that the same is therefore void in law, as against these defendants, as creditors of said company, without regard to the intention and design of the parties to said lease or conveyance in writing.

These defendants, further answering, state and show to the court, that in this the district court of the United States for the district of Wisconsin, on the second day of October, 1857, the said La Cross & Milwaukee Railroad Company, further designing to hinder, delay, and defraud its creditors of the enforcement of their rights, debts, and damages against it, and to aid, brace up, and give additional color to the right of said Selah Chamberlain under said pretended lease, and thus enable the said Chamberlain more successfully and certainly to aid the said company in its fraudulent design of hindering, delaying, and defrauding its creditors, as aforesaid, did confess to said Selah, and suffer to pass against it, a judgment in his favor, and against said company, for the sum of six hundred and twenty-nine thousand eighty-nine dollars and 72 cents damages, and fifteen dollars and 50 cents costs; which said judgment, fraudulently confessed and suffered, as aforesaid, was in form regularly docketed in said court on the day and year last aforesaid; and that the said Selah sought the said judgment to aid him in his possession and claim of right under said lease, before then known to him to be fraudulent, as aforesaid; and that said company was not at the time indebted to him, said Chamberlain, in any such sum as the amount of said judgment, but that a large sum, to wit, two hundred thousand dollars, part of the pretended debt or claim on which said judgment was confessed and suffered, as aforesaid, was wholly fictitious, as the said Selah well knew, and that

said Selah well knew, when the said judgment was confessed and suffered, as aforesaid, that the said company intended thereby to hinder, delay, and defraud its creditors, and that the said judgment is, for these reasons, void in law as against these defendants, who are creditors of said company as aforesaid.

These defendants, further answering, state and show to the
54 court, upon information and belief, that the said Selah Chamberlain, ever since he entered into possession of the said railroad, as aforesaid, has taken and received, and is now taking and receiving, all the tolls and profits, income and revenue of said company's railroad and other property described in said lease or conveyance in writing; and that he has taken and received, under said pretended lease, of tolls, income, and revenue of said railroad and property, a large amount of money over and above the actual and necessary expenses of operating said railroad and keeping the same in repair, more than sufficient to pay the accruing interest upon the several mortgages in said lease specified, including the mortgage or trust deed to the said complainants, and also to pay and satisfy the said judgment of these defendants so, as aforesaid, rendered and now remaining unpaid and unsatisfied of record in this court; and that said Chamberlain received during the months of September, October, and November, 1859, of such tolls, income, and revenue, over sixty thousand dollars over and above the current expenses of running and operating said railroad during said three months, all of which was nett profits, and which sum, or so much thereof as might be necessary or proper, he, the said Chamberlain, was bound by the terms of said lease to use and apply in paying the interest due and unpaid upon the bonds described and set forth in the complainants' said bill of complaint, and ought in justice to have applied in payment of these defendants' said judgment, but that the said Chamberlain wilfully and fraudulently has neglected and refused to pay these defendants' said judgment, as well as the said interest so due, as aforesaid, upon the said bonds, and has applied the said moneys in payment of pretended debts due to him by said company, and secured by said fraudulent lease and judgment, or has used and applied said moneys for his private purposes, in fraud of these defendants and the other creditors of the said company.

These defendants further answering state and show to the court, upon information and belief, that the said defendant, Chamberlain, with the fraudulent intent further to hinder, delay, and injure the creditors of said railroad company, and further to maintain, secure, and provide for his said pretended claims, rights, and interest under the said lease and judgment, did designedly neglect and omit to pay the interest due on the first day of September, 1859, on the one thousand bonds mentioned in the complainants' said bill of complaint, he, the said Chamberlain, having received from the tolls, income, and revenue of said company, and then having in his hands, sufficient monies to pay the whole amount of said interest; and that afterwards, and on or about the 20th day of November, 1859, the said Chamberlain did fraudulently contrive and combine with said complainants, or with one Prentiss Dow, the agent of said complainants, and also

of a part of said bondholders, and with the knowledge and approval of said complainants, to make the non-payment of the said
55 interest the ground and occasion for instituting the present action and foreclosing the said mortgage or trust deed, executed as aforesaid to the said complainants, and to effect and procure a sale of the said railroad with all its property, rights, and franchises, conveyed and purporting to be conveyed by said mortgage or trust deed, for the joint benefit, advantage, and profit of the said Chamberlain, the said complainants, and the holders of about 600 of the bonds secured by said trust deed; and that with like fraudulent intent, covin, and purpose the said Chamberlain, on or about the 20th day of November, 1859, at the city of Milwaukee, did make and enter into an agreement in writing with the said complainants or with their agent, Prentiss Dow, and with the holders and owners of about six hundred of the said bonds, who were represented by the said Dow with the knowledge and approval of the said complainants, of the particulars of which agreement these defendants have not been informed, but the substance and effect of which was, as these defendants are informed and believe, that the said Chamberlain should aid and assist the said complainants in the prosecution of the present action to foreclose the said trust deed or mortgage, and in procuring a decree of this court for the sale of the mortgaged premises; and that at such sale the said Chamberlain should bid in and purchase the mortgaged premises at the lowest price and sum practicable, and take a deed of the same in his own name; and that the title to all the property, rights, and franchises acquired by him under the said decree and by means of said purchase should be taken and held by him, according to the terms of said agreement, for the joint benefit, profit, and advantage of him, the said Chamberlain, and the said bondholders represented by the said Prentiss Dow, without requiring the full amount or any considerable part of said bid to be paid in money; and that under and by virtue of said purchase the said Chamberlain should be allowed or secured a large share or interest in the said property, rights, and franchises in payment or satisfaction for his aforesaid fraudulent and pretended claims, rights, and interests under and by virtue of the aforesaid fraudulent lease and judgment.

These defendants, further answering, state and show to the court, upon information and belief, that since the date of the said agreement by and with the aid and procurement of the said Chamberlain and his retained agents, solicitors, and counsel the present action has been commenced; and that the said Chamberlain has employed, among others, the law firm of Fenches, Lynde & Miller, and paid them a retaining fee of five hundred dollars to aid in the prosecution of this action and secure the foreclosure of said mortgage or trust deed, and the sale of the mortgaged premises; and that the same was done with the corrupt and fraudulent intent and purpose of hindering, delaying, defrauding, and cutting off these defendants and all other creditors of said company whose liens are subsequent to the lien of said mortgage or trust deed, and to secure to himself a large share or interest in the mortgaged premises after such sale, in payment or satisfaction
56 of his said pretended claims, rights, and interest under said

fraudulent lease and judgment, in pursuance of the aforesaid written agreement, or of some other corrupt and fraudulent arrangement, by which the said Chamberlain was to acquire and have the same benefits and advantages above stated in respect to his fraudulent claims under said lease and judgment.

These defendants, further answering, say that they are advised and believe, and therefore insist that the present action has been procured to be commenced, and is prosecuted by fraudulent and corrupt means, and for fraudulent purposes, and is oppressive and unjust as against these defendants; that the money and means in the hands of the said Chamberlain, belonging to the said La Crosse and Milwaukee Railroad Company, ought to be applied to the payment of the interest due and to become due on the bonds mentioned and described in the complainants' bill of complaint, so far as the said bonds or any of them shall be adjudged legal and valid; and that a receiver ought to be appointed by this court, with the usual and proper powers, to take charge of the railroad and all the property conveyed in and by said mortgage or trust deed, and to hold, manage, and operate said railroad and property, to receive the tolls, income, and profits thereof, and after paying the necessary expenses for repairs, and for running, managing, and operating said railroad, to pay the residue of all such receipts into this court, to be disposed of as may be just and equitable, and as this court shall direct. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and hereby pray to be hence dismissed, with their reasonable costs and charges in that behalf most wrongfully sustained.

LAWRENCE G. GRAHAM.
DONALD D. SCOTT.
By CARPENTER & GRIDLEY,
*His Sol'rs.*

CARPENTER & GRIDLEY, *Sol'rs for Def'ts.*
MAT. H. CARPENTER, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

On this 27th day of March, A. D. 1860, before me personally came Lawrence G. Graham, one of the defendants named in the foregoing answer, who being by me duly sworn, did depose and say that he had read the said answer and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes said answer to be true.

J. M. MILLER,
*Clerk U. S. D. C. Wisconsin.*

And afterwards, to wit, on the 24 day of April, 1860, came the defendant, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, by its solicitors, Messrs. Emmons, Van Dyke and Hamilton, and filed its answer as follows:

57 *Answer of Mil., Wat., & Bar. Val. R. R. Co.*

The district coart of the United States for the district of Wisconsin—
In equity.

The separate answer of the Milwaukee, Watertown and Baraboo Valley Railroad Company, one of the defendants to the bill of complaint of Greene C. Bronson and James T. Soutter, complainants, against the said Milwaukee, Watertown and Baraboo Valley Railroad Company, defendant, impleaded with the La Crosse and Milwaukee Railroad Company, and other defendants.

This corporation, defendant, now and at all times saving and reserving unto itself all manner of benefit of exception to the many errors and imperfections in the complainants' said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary to make answer unto, answering says:

That this defendant is a stranger to most of the matters and things set forth and alleged in the bill of complaint; and that except as to the matters and subjects herein specifically answered unto, this defendant prays to leave the complainants to such proofs as they may be advised to make in the premises.

This corporation, defendant, did, in the month of December, 1857, and by authority of law, purchase from the La Crosse and Milwaukee Railroad Company, and thereafter in virtue of such purchase become possessed of that portion of the lines of railroad described in the bill of complaint as included and embraced in the mortgage or trust deed to the complainants, known formerly as part of the Milwaukee and Watertown railroad, and extending from the city of Watertown to Columbus. That this defendant, in the said month of December, paid to the said La Crosse and Milwaukee Railroad Company a full and valuable consideration therefor; and that this defendant is under no covenants or obligation to pay any part or portion of the debt secured by the said mortgage or trust deed to the complainants. That all the property, rights, privileges, appurtenances, franchises, and estate which the La Crosse and Milwaukee Railroad Company ever had or acquired, or which ever appertained to the Milwaukee and Watertown Railroad Company, or its line of road from Milwaukee to Columbus, with all rolling stock, tools, machinery, implements, and paraphernalia of every name and description appertaining thereto, and all that were ever added thereto by the La Crosse and Milwaukee Railroad Company, or used or made use of in the opperation of its "Watertown division," so called, passed to and became the property of this defendant in virtue of such purchase.

And this corporation, defendant, prays that the decree of this court in the premises may order and direct that the portion of said mortgaged premises, so purchased and possessed by this defendant, shall be excluded and exempted from sale to satisfy any decree herein,

58 until after all other parts and parcels of the mortgaged premises, or such part or parts thereof as may be necessary to satisfy such decree, shall have been first sold. And the defendant prays for

such other or further order or relief in the premises as may be agreeable to equity and good conscience, and as the court may be competent to give, that it may be hence dismissed, with its reasonable costs and charges in the premises.

The Milwaukee, Watertown and Baraboo ValleyRail road Company has caused the signatures of its president and secretary to be hereunto annexed, and the corporate seal to be affixed.

{M., W., B. V. R. R. CO. CO. SEAL.}

N. J. EMMONS, *President.*
C. D. SMITH, *Secretary.*

EMMONS, VAN DYKE & HAMILTON, *Sol'rs.*
C. A. HAMILTON, *of Counsel.*

And afterwards, to wit, on the 7th day of May, 1860, came the defendant, Selah Chamberlain, by his solicitors, Messrs. Emmons, Van Dyke & Hamilton, and filed his answer, as follows:

*Answer of Chamberlain.*

The district court of the United States for the district of Wisconsin—
In equity.

The separate answer of Selah Chamberlain, one of the defendants to the bill of complaint of Greene C. Bronson and James T. Soutter, complainants, against Selah Chamberlain, impleaded with the La Crosse and Milwaukee Railroad Company and others, defendants.

This defendant, by protestation, saving and reserving unto himself all benefit of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering says:

That he admits the incorporation of the said La Crosse and Milwaukee Railroad Company; and he also admits the several enactments by the legislature of Wisconsin set forth in the bill of complaint; and defendant further admits that said railroad company, and at or about the time and in the manner alleged, executed and issued one thousand bonds of the tenor mentioned; and that, in order to secure the payment of the same, said company executed and delivered to the complainants the mortgage or deed of trust described in the bill of complaint.

And this defendant, further answering, says he admits that default has been made in the payment of interest at the times and to the amount alleged in the bill of complaint; but he expressly avers that such defaults have not occurred by reason of any wrong or
59 negligence on his part, but he says that such defaults have occurred in consequence of the nett earnings of said railroad, after deducting the necessary outlays for repairs, rolling stock, telegraph lines, right of way, and other necessary expenses, proving insufficient to pay such interest. That said complainants have been furnished with—through their agents and attorneys—prior to the exhibition of their bill of complaint, and from time to time since have had free access to the accounts of this defendant, which show the

earnings of said railroad, the operating expenses, and the outlays for the necessary purposes aforesaid; and this defendant prays leave to produce and make exhibits of the same at such time and in such manner as the court may direct.

And this defendant, further answering, admits that he has been in possession of said railroad, and still is in possession thereof, and has been and still is operating the same under and by virtue of the instrument of agreement or mortgage, and commonly denominated a lease, and has been using and operating said road, and still is to the lawful uses and purposes expressed in said instrument of mortgage, a copy whereof, or what purports to be such, is annexed to said bill of complaint.

And this defendant, further answering, says he admits that the said mortgage or trust deed to the complainants conveyed a number of locomotives and rolling stock of various descriptions, and altogether of the value of at least two hundred thousand dollars, and that the same belonged and were a part of the railroad from Milwaukee to Portage City; and he says that he has used such rolling stock and engines in operating, in connection with said line of road from Milwaukee to Portage City, the line of road constructed by the same La Crosse and Milwaukee Railroad Company, extending from Portage City westward to La Crosse, and which was embraced in and conveyed in mortgage to this defendant in and by the said instrument of mortgage to him hereinbefore referred to; and that, by such use, he avers the actual receipts and nett earnings of the road from Milwaukee to Portage City have been largely enhanced.

And this defendant, further answering, says that of the indebtedness secured to him by said instrument of mortgage there was due to him from the said La Crosse and Milwaukee Railroad Company on the first day of January, 1860, the sum of seven hundred and seventy-eight thousand four hundred and three dollars and sixty-three cents; and also about the further sum of eighty-seven thousand eight hundred and fifty dollars and forty-five cents, all of which is still due, with accruing interest thereon, since said first day of January. The latter sum is stated separately and distinct, because this defendant claims that the same is a peculiar and preferred lien over all other encumbrances on the line of road westward from Portage City to La
60 Crosse. These sums are exclusive of the sum of about sixteen thousand dollars expended by defendant in the erection of depot buildings at La Crosse, on lands rented by defendant, and they include the indebtedness to defendant as it existed on the first day of October, 1857, and the expenditures by him made and liabilities incurred in the operation of said railroad, and in the repairs, maintainance, and defence and protection of the estate thereof; of all which he prays an account may be taken, under the order and direction of this honorable court, and for all which he claims a lien, next in order, so far as the said road from Milwaukee to Portage City is concerned, to that of the complainants.

And this defendant, further answering, says that, in addition to the indebtedness aforesaid, he is a creditor of the railroad aforesaid; he is a creditor of the said railroad company as the owner of a certain

judgment rendered in this honorable court, on the law side thereof, on the third day of October, 1857, in favor of one Newcomb Cleveland, for the sum of one hundred and eleven thousand seven hundred and twenty-seven dollars and seventy-one cents, besides costs and interest thereon since said third day of October, and which said judgment, as defendant is advised and therefore avers, formed and created an equitable lien upon said railroad, which still subsists. That the whole amount thereof is still due and unpaid, and that said judgment remains unsatisfied and unreversed; and that the same is a lien and encumbrance upon said railroad, next in order to the liens and encumbrances of the defendant hereinbefore stated.

And this defendant, further answering, denies that that portion of the plaintiffs' security designated in the bill of complaint as the railroad from Watertown to Midland, by way of Columbus, is of little value, but, upon the contrary thereof, this defendant says that about twenty miles thereof is completed and in running order; that the plaintiffs' mortgage is the first incumbrance thereon, and that that part of said plaintiffs' security is of great value, and the proceeds of the sale thereof should go far towards, if they do not prove fully adequate to pay, the amount due the plaintiff

And this defendant, further answering, admits that the said railroad from Watertown to Midland, by way of Columbus, has been conveyed to the Milwaukee, Watertown and Baraboo Valley Railroad Company; but this defendant alleges that the sale thereof was so made after the execution of this defendant's mortgage upon the balance of the security embraced in said plaintiffs' mortgage, and after this defendant had entered into possession under his mortgage. That this defendant's mortgage or security does not cover or extend to said railroad from Watertown to Midland, by way of Columbus, so embraced in and covered by the p'aintiffs' mortgage; and he insists that that part of the plaintiffs' mortgage security should be decreed to be first sold before that part embraced in and covered by this defendant's mortgage.

61 And this defendant prays that the said railroad from Watertown to Midland, by way of Columbus, may be sold first in order, before the other railroad and property embraced in this defendant's mortgage, to satisfy the plaintiffs' mortgage, and that this defendant's claims and demands aforesaid may be established by the order and decree of this court; and that the same may be paid out of the proceeds of sale, and for such other and further relief in the premises as may be agreeable to equity, and as the court may be competent to give.

S. CHAMBERLAIN.

EMMONS, VAN DYKE & HAMILTON,
*Sol'rs for S. Chamberlain.*
WM. P. LYNDE, *of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

On this fifth day of May, 1860, before me, the undersigned, a commissioner of the district court of the United States for the district of

Wisconsin, personally appeared Selah Chamberlain, and made oath that he has read the foregoing answer by him subscribed, and that he knows the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein alleged to be upon his information and belief, and that as to such matters he verily believes it to be true.

WINFIELD SMITH,
*U. S. Commissioner and Master in Chancery.*

*Replication.*

And afterwards, to wit, on the 7th day of May, 1860, came the complainants by their solicitor, and filed their replication to the answer of John S. Rockwell, as follows:

District court of the United States for the district of Wisconsin—In equity.

The replication of Greene C. Bronson and James T. Soutter, complainants, to the separate answer of John S. Rockwell, one of the defendants to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say: That they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN,
*Sol. for Compl'ts.*

62 *Replication.*

And afterwards, to wit, on the 7th day of May, 1860, came the complainants by their solicitor, and filed their replication to the answer of Lawrence G. Graham and Donald D. Scott, as follows:

District court of the United States for the district of Wisconsin—In equity.

The replication of Greene C. Bronson and James T. Soutter, complainants, to the joint and several answer of Lawrence G. Graham and Donald D. Scott, two of the defendants to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say: That they will aver and

prove their said bill to be true, certain and sufficient in the law to be answered unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN,
*Sol. for Compl'ts.*

And afterwards, to wit, on the 7th day of May, 1860, came the complainants by their solicitor, and filed their replication to the answer of the Milwaukee, Watertown and Baraboo Valley Railroad Company, as follows:

*Replication.*

District court of the United States for the district of Wisconsin—In equity.

The replication of Greene C. Bronson and James T. Soutter, complainants, to the separate answer of the Milwaukee, Watertown and Baraboo Valley Railroad Company, one of the defendants to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say: That they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN,
*Sol. for Compl'ts.*

63 And afterwards, to wit, on the 7th day of May, 1860, came the complainants by their solicitor, and filed their replication to the answer of Selah Chamberlain, as follows:

District court of the United States for the district of Wisconsin—In equity.

The replication of Greene C. Bronson and James T. Soutter, complainants, to the separate answer of Selah Chamberlain, one of the defendants to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say: That they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is

uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN, *Sol. for Comp'ts.*

*Appointment of Receiver.*

*July* 6, 1860.—This day came the complainants by their counsel, and on their motion it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad of the said The La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges and franchises, and all other personal and real property belonging to the said railroad company, and belonging to or used or connected with said line of said road, (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver of the western portion of said road from Portage City to La Crosse,) and be at once put into possession of the same, and every part and parcel thereof.

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker, as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances and other personal property which belongs or has been procured for or used in connection with said railroad or any part thereof, which may have come to the hands of the said defendants, or over which they have control;

64 and that such receiver take possession thereof, *and take possession thereof*, and take directly or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation or use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership, and the costs and expenses of operating and maintaining or preserving and keeping said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court.

And it is further ordered that the said receiver and any other party in interest in this suit have leave from time to time to apply to this court for such further directions in respect to such property and the management and proceeds thereof as may be just and may be required.

And same day (July 6, 1860) came the defendants, Sebre Howard

and John S. Rockwell, by their counsel, Mr. Hubbell, and on their motion it is ordered by the court that the time for taking testimony on either side be and hereby is extended to the second Monday of August next, and that the testimony be taken by either side according to the rules of court.

*Order appointing Receiver modified.*

*July* 7, 1860.—This day came the parties by their counsel, and also came Hans Crocker, the receiver, and made his report, from which it appears, among other things, that there are mechanics' liens and mortgages upon the depot buildings and depot grounds of said road; that thirty-five miles of right of way remain to be secured and paid for; that one hundred and forty miles of fencing remain to be completed; that there is due for rolling stock purchased by S. Chamberlain while in possession of the road, and mortg·ged by him to the vendor, $9,547 91; that the depot grounds are encumbered with taxes and tax deeds; and further, that there is an immediate necessity for the purchase of at least three locomotive engines and fifty freight box cars. Said report having been submitted by consent; and upon the consideration thereof it is ordered, adjudged, and decreed by the court that the order appointing said receiver, be and is hereby, modified, and the court doth now here order and decree in manner following:

That the said receiver shall have power to bring and maintain any action or actions necessary or proper in order to enable him to execute his duties; which actions or suits may be brought in the name of the La Crosse and Milwaukee Railroad Company; and in like manner he may defend any action or suit affecting the interests of the said company, so far as may be necessary to protect the property and interests confided to his care, or as may be necessary and proper to enable him to discharge his duties as such receiver.

He shall also have power to compromise and settle all suits or actions that have been or may be brought against said company, so far as may be necessary to protect the property committed to his care, upon such terms and conditions as to him shall seem most ad-
65 vantageous to said railroad or to said company, or other parties interested therein. He shall also have power, and is hereby authorized, to compromise, settle, and discharge all lawful claims against said company or said road for right of way, liens upon depot grounds or buildings, taxes upon depot grounds, and special liens upon the rolling stock in use upon said road, so far as may be necessary to protect the property of said company. He shall also have power to arbitrate or compromise, on such terms as he shall deem most advantageous to the interests of the road, all claims for damages for detentions or injury to persons or property arising from running or operating said road. The net earnings of the road shall be applied as follows, as far as may be deemed necessary:

To the payment of such sum as shall hereafter become due the State of Wisconsin for license to operate said road by virtue of any law of the State.

To the payment of all sums due operatives and employees of the road, and for materials or supplies furnished said road which have accrued since the first day of April last; but the receiver shall be authorized to pay any proper expenses incurred in the operating or managing of said road previous to that date, provided the same shall not exceed the sum of one thousand dollars.

To the payment of such sums as may be necessary to acquire the title to the right of way and depot grounds now used and occupied by the road.

To the payment of all sums due or that may become due to connecting roads on freight or passenger account in the ordinary course of business.

To the payment of the amount due on three notes given by S. Chamberlain in the month of August, 1859, for part payment on the purchase of freight cars, and which are subject to a chattel mortgage to secure the payment of such notes.

To the payment of such expenses as may be incurred in fencing so much of the line of road as the receiver may deem necessary.

The said receiver shall have power and authority to purchase such locomotives and freight cars as may be necessary for the business of the road, but not to exceed three locomotives and fifty house freight cars, and at a cost not exceeding fifty-four thousand dollars; and for such portion of the purchase money of such engines and cars as the receiver shall not be able to pay at the time of the purchase or delivery thereof he may execute to the vendor a chattel mortgage thereon, to secure the payment of such purchase money in arrear.

To the payment of the costs of this suit, including the fees and charges of the solicitors and counsel of the complainants incurred in this foreclosure or that may be incurred therein, and all necessary expenses that have been or may be incurred in respect thereto, subject to allowance by the court.

The receiver, acting in pursuance of this or any former or of any subsequent order or decree hereinafter to be made, in good faith and with ordinary care and prudence, shall not be individually liable for any breach of contract entered into by him as such receiver, or for any injury to person or property of the parties or of third persons, or for the faults or negligence of his subordinates, and for his in-
66 demnity against or exoneration from any and all such liabilities, should any such occur, the property, money, and effects that shall at any time be in his hands as such receiver shall be bound, and may from time to time, as may be necessary, be applied in such manner as the court shall direct.

*July* 14, 1860.—Report of receiver for month of June filed.

*Rule for commission.*

*August* 3, 1860.—This day came the defendants, Lawrence G. Graham and Donald D. Scott, by their solicitors, and entered in the order and rule book a rule for a commission to issue to John Livingston, esq., of the city of New York, to take the testimony of Prentiss

Dow, of said city, and also filed interrogatories to be annexed to said commission.

And afterwards, to wit, on the 13th day of August, 1860, came the defendant, Ephraim Mariner, in person, and filed his answer, as follows:

*Answer of Mariner.*

U. S. district court, district of Wisconsin.

JAMES T. SOUTTER & GREENE C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, AVERY HILL, EPHRAIM MARINER, and others.

The separate answer of Ephraim Mariner to the complainants' bill:

This defendant, saving and reserving to himself all manner of benefit and advantage of exception to the insufficiencies of the plaintiffs' complaint, for answer thereunto, or unto so much or such part thereof as he is advised is material and necessary to be answered unto, show:

That he admits that the said corporation made and executed and delivered to the said complainants the said mortgage mentioned in the said bill of complaint, and that it has been recorded as in said bill set forth.

And this defendant, further answering, on information and belief, says, that although said mortgage appears and seems to be, and in form is, valid, yet that the same was given to secure certain bonds in said mortgage mentioned and for no other purpose; that a large number of said bonds are now held in fraud of said La Crosse & Milwaukee Railroad Company, and of this defendant, a creditor of said company, by persons who have paid little or nothing therefor, and that the same ought to be surrendered and cancelled, or, at the least, that said fraudulent holders of said bonds should only be permitted to receive what they have paid therefor, and interest only upon the same; that Selah Chamberlain holds or controls two hundred of said one thousand dollar bonds in fraud of said company, and
67 of this defendant, as its creditor, *that the said Chamberlain.*

That said Chamberlain never paid to said company any sufficient consideration for said bonds; that said bonds were delivered to said Chamberlain in satisfaction of a pretended claim and a claim, as this defendant is informed and believes, without any foundation, and that said Chamberlain received said bonds for that consideration and no other, and that he holds the same without any valid or sufficient consideration and in fraud of the creditors of said company. That said James T. Soutter, one of the said complainants, now holds and pretends to owns 55 of said bonds, and pretends to be entitled to recover therefor, which said bonds he obtained, as this defendant is informed and believes, fraudulently from said company, and for which he never paid and for which said company never received any valuable consid-

eration; that Prentiss Dow holds and pretends to own 14 of said bonds, for which the company, as this defendant is informed and believes, received only one thousand dollars in cash or in property valuable to said company therefor; and that all of said bonds secured by said mortgage were wasted and squandered by the fraudulent conduct of said complainants and the officers of said company, so that said company never received therefor in money above 200,000 dollars, and that no decree should be passed in this case for any greater sum nor for the interest upon any greater sum, and that the earnings of said road and franchises now in the hands of the receivers in this cause will, when added to the amount already received by Prentiss Dow, agent of said complainants, sufficient to satisfy said amount of interest for which said decree should be passed, and that the money so held by said Dow, received by him out of the revenues of said railroad to be applied upon said accrued interest, and the money now in the hands of the receiver in this cause is sufficient to pay and discharge the accrued interest on the 192,000 dollars and the costs of this suit.

This defendant, further answering, shows that previous to the execution and delivery of the said mortgage the defendants, Avery Hill and Alonzo V. Rudd, entered into a contract with the said La Crosse and Milwaukee Railroad Company to build and construct for the said company, upon block forty-one in the 2nd ward of the city of Milwaukee, a depot building four hundred and twenty feet front, in twenty-one apartments, for the sum of $79,150, to be paid in monthly estimates as the work progressed; that said Hill & Rudd commenced work upon said building on or about the first day of June, 185 , and put up and constructed upon said block a part of the said buildings, and expended thereupon the sum of $13,656 62, and received therefor from time to time the estimates of the engineer of said company and presented the same to said company, and that the same were not paid. That afterwards, and on the 17th day of August, 1858, the said Hill & Rudd commenced an action in the circuit court of Milwaukee county, under and by virtue of the provisions of the statute entitled of the liens of mechanics and others, to recover sa d sum of money and
68 to have the same adjudged a lien upon the said block under said statute; that such proceedings were had in that action that a judgment was recovered in said court in said action for the sum of $13,372 85 in favor of said Hill & Rudd against said La Crosse and Milwaukee Railroad Company, which was then and there adjudged a lien upon said buildings and upon the right, title, and interest of the said company in and to said block forty-one. That afterwards execution was issued upon said judgment, and the said buildings, the front sixty feet of lots five, six, and the north half of lot seven in said block, was sold at public auction to this defendant by the sheriff aforesaid, and that said sheriff executed and delivered a deed therefor to this defendant.

This defendant, further answering, shows that on or about the 27th day of December, 1860, the said Avery Hill and A. V. Rudd assigned and delivered all their right, title, and interest in and to said judgment to this defendant for a valuable consideration to them paid, and that he is now the holder and owner thereof.

This defendant, further answering, shows that, as he is informed and believes, the said Hill & Rudd became indebted unto one Joseph Carney, a brickmaker, in about the sum of sixteen hundred dollars for materials furnished by him and to be used, and which were used in the construction of the said building; that said Carney gave notice that he claimed a lien therefor upon said building and said premises to said company, and afterward commenced an action in the county court of Milwaukee county to enforce the said sum as a lien upon said building and said premises, under and by virtue of the provisions of the statutes aforesaid; that such proceedings were had in said action that a judgment was recovered in said action against said company in favor of said Carney for the sum of ———, which said sum was, in and by said court, adjudged a lien upon said building and the right, title, and interest of the said company on said block, pursuant to the provisions of the statute from the date of the commencement of the said building; that afterwards said building and the interest of the said company on the front sixty feet of lots five, six, and seven, upon which said building was situate, was sold by the sheriff of Milwaukee county pursuant to the said judgment to the said Carney, who received from the said sheriff a deed therefor; that said Carney afterwards conveyed said premises to one J. O. Noxon, who, afterwards, by deed, conveyed the same to this defendant.

And this defendant further shows that the said remainder of said judgment is a lien upon the south end of said block, of the date of the 20th day of June, 1857, and is a lien prior to the mortgage in said bill set forth.

And this defendant further shows that on the 30th day of August, 1858, he impleaded the said La Crosse and Milwaukee Railroad Company in the circuit court of Milwaukee county, in an action for the recovery of money, and that such proceedings were had in said action
69 that on the 13th day of October, 1858, a judgment was rendered in said court in favor of this said defendant against the said La Crosse and Milwaukee Railroad Company for the sum of $5,124 93, which said judgment is docketed in said county on that day and became and was a lien upon the property in said company, situate in said county, from that date; without this, that any other matter or thing in this complaint set forth and not herein and hereby confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant.

E. MARINER, *in person.*

E. MARINER, *Sol., and of Counsel.*

DISTRICT OF WISCONSIN, *ss:*

This thirteenth day of August, 1860, before me came Ephraim Mariner, and made oath that he had read the foregoing answer by him subscribed, and that the same was true of his own knowledge, except as to the matters therein and stated to be upon information and belief, and as to those matters he believes it to be true.

WINFIELD SMITH,
*Master in Chancery.*

*August* 14, 1860.—Depositions received from Walter S. Carter, esq., and filed.

*August* 14, 1860.—Report of receiver for the month of July, filed.

And afterwards, to wit, on the 16th day of August, came Sebre Howard, one of these defendants, by his counsel, and by leave of the court filed an amended answer, as follows:

*Amended answer of Sebre Howard.*

United States district court, Wisconsin district.

GREENE C. BRONSON and JAMES T. SOUTTER, *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, SEBRE HOWARD, *et al.*, } Amended answer of the defendant Sebre Howard.

And for a further and amended answer to the bill of complaint of the complainants, in the above entitled action, the defendant Sebre Howard, by leave of the court, for that purpose first had and obtained by Levi Hubbell, his solicitor, answering states and shows to the court: That at the time of executing and delivering to the said complainants of the trust deed or mortgage, in the said bill of complaint mentioned, by the said La Crosse and Milwaukee Railroad Company, the said company was lawfully seized and possessed of, and owned, various lots, pieces and parcels of land, and that since that time, and before the commencement of this action, the said company purchased, acquired, and became lawfully seized and possessed of, and owned, various other lots, pieces and parcels of land—all of which are
70 situated in the second, sixth and ninth wards of the city of Milwaukee, and which lands were not described, mentioned or included, in said trust deed or mortgage, and did not at the time of executing said mortgage, and never since that time, have been or constituted any part of the site of the road ways, turnouts, engine houses, workshops, depots or other buildings of said railroad company, and never have constituted or been a part of, or appertained to the railroad or railroads of the said company—and that therefore, as this defendant is advised and believes, and therefore avers, the said lands are not subject to the lien and claim of the said complainants, under or by virtue of the said trust deed or mortgage, but that the same are subject to the lien of this defendant's judgment in this his answer before set forth, and ought to be applied and appropriated to pay the same.

This defendant therefore prays that it may be referred to a master of this court, to ascertain and report to this court the quantity and description of the lands, so as aforesaid owned by said company and not embraced in said trust deed or mortgage, so that the same may be excepted from sale under any decree or order which this court may

make for the sale of the mortgaged premises, pursuant to the prayer of the complainants' said bill.

LEVI HUBBELL,
*Sol'r for def't S. Howard.*

And same day (August 16, 1860) came A. Fleming, by his counsel, Mr. Carpenter, and filed his petition in writing, praying, upon reasons therein stated, for leave to put in an answer in the name of the defendant, the Milwaukee and Minnesota Railroad Company, which petition is as follows:

*Petition of A. Fleming.*

In district court of the United States for the district of Wisconsin—In equity.

GREENE C. BRONSON *et al.*, Trustees,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others, defendants.

*To the Judge of said court:*

Humbly petitioning, your petitioner, A. Fleming, shows to the court that La Crosse and Milwaukee Railroad Company, defendant, is a corporation created by and existing under the laws of this State of Wisconsin, and that its business and affairs are managed and controlled by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed, which was unsecured upon the
71 railroad or other property of said company; and that a large number of farmers along the line of said company's said railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of said railroad, which bonds and mortgages had been before then used by the said company, with a stipulation on its part to pay the interest that might accrue thereon, and that large sums of money, interest thereon, which said company was bound to pay as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farms to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness, and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute and perfect, ready to be negotiated, sold, delivered and transferred in payment of said indebtedness of said company and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day, and payable in A. D. 1888, with interest at 7 per cent., payable semi-annually on the 1st days of January and July in each year,

with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, A. D. 1858, make, execute, sign, seal and perfect its mortgage, in due form of law, to William Barnes, to secure the payment of said bonds and the interest thereon, in and by which said mortgage said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land, which then were or thereafter might be or constitute the site of the roadways, turnouts, engine houses, workshops, depots and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether then made or to be made thereafter, and all the engine houses, workshops, depots and other buildings; and all the other improvements on or appertaining to said railroad, whether then made or built, or to be built and made thereafter, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements and utensils and other personal property which had
72 then been or might thereafter be procured for or used in connection with such railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company so far as they related to said railroad company to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, and was by said trustee thereafter caused to be recorded in the office of the secretary of state of the State of Wisconsin, and in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, delivered to said Barnes, trustee, a certain indenture or supplementary mortgage, in and by which said company recited and affirmed the terms and conditions of said mortgage first herein set forth, and did convey to said Barnes, as trustee as af's'd, in mortgage as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say:

"All and singular the rights, privileges, liberties, and franchises of said company of every kind and description.

And also all lands granted, or intended to be granted, to said company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin in said supplementary mortgage mentioned, and all the hereditaments and appurtenances be-

longing or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, which might be owned or in which said company might have an interest, on such day as said company might first make default in the payment of the interest or principal, or any part thereof which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given.

That immediately thereafter said Barnes caused said supplementary mortgage to be recorded, as and in the same offices as hereinbefore set forth, in case of the said mortgage hereinbefore first set forth.

That immediately thereafter said company commenced to deliver the said bonds, so secured as aforesaid, in payment of the indebtedness of said company and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company; and that all of said bonds were sold, delivered in payment, and transferred by said company for the purposes and in the manner contemplated by said company; and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons
73 against said company for materials furnished to and services rendered for said company; and that large numbers of said bonds are now held by such persons in the said State, as your petitioner is informed and believes; and that a large amount of said bonds has passed into circulation in the bond and stock markets of the United States, particularly in the city of New York.

That about the 1st day of February, A. D. 1859, the said company having made default in the payment of a part of the interest due on said bonds, secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the said State of Wisconsin then in force in that behalf, proceeded to the foreclosure of said mortgage by advertisement; and having the notice required by law, on the 21st day of May, A. D. 1859, said trustee sold at public auction at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage described, and became the purchaser thereof, according to the provisions of the laws of said State of Wisconsin then in force in that behalf, at and for the sum of *one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents* ($1,593,333 33,) no other person or body having made any bid whatever for the same; and that said mortgages became thereby foreclosed according to the provisions of the laws of said State of Wisconsin in that behalf then in force; and that said Barnes, by virtue of said purchase and the provisions of the laws of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the outstanding bonds secured by said mortgage.

And that afterwards, to wit, on or about the 24th day of May, A. D. 1859, the owners and holders of the said bonds proceeded to organize anew, and then and there elected directors and took the corporate name "Milwaukee and Minnesota Railroad Company," and thereafter proceeded and conducted their business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company; and said Milwaukee and Minnesota Railroad Company thereby became, and ever since has continued, as this petitioner is informed and believes, a corporation under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in the possession of said La Crosse and Milwaukee Railroad Company at the time of said sale and said organization of said new company.

That said bondholders, at the new organization aforesaid, chose and elected Russell Sage, N. J. Emmons, Wm. E. Smith, W.
74 B. Gilbert, Hans Crocker, ——— Battershall, William Gould, S. R. Sill, Lemuel W. Weeks, directors of said new company; and that said directors then organized in the said city of Milwaukee a board of directors of said Milwaukee and Minnesota Railroad Company, and elected Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota Railroad Company; and that it became, and then and thereafter was, the duty of the said Russell Sage to protect in all things the rights and interests of said new company.

That said new company, being thereto by the laws of the State of Wisconsin duly authorized, converted said bonds into stock of said new company, when requested by said bondholders, and issued to such bondholders certificates of stock of the same amount of the bonds by said bondholders respectively held and owned; and said bondholders became, by such certificates of stock, stockholders in said Milwaukee and Minnesota Railroad Company.

Your petitioner further shows, that at the time of said sale and purchase by said Barnes your petitioner was the owner of ten thousand dollars, represented by said bonds, and was joint owner of, and had exclusive control over, ten thousand dollars, represented by other of said bonds, and became entitled to and did receive from said Milwaukee and Minnesota Railroad Company certificates of stock in said company corresponding to his said first ten thousand dollar interest in said bonds, and that your petitioner has ever since been, and now is, a stockholder in said new company in virtue of his said bonds, and interested in its prosperity and affairs.

Your petitioner further states and shows, that your petitioner and other persons, stockholders of said Milwaukee and Minnesota Railroad Company, in right of said bonds, as your petitioner is, and who own and hold in the aggregate 289,000 thousand dollars of the capital stock of said new company, had a meeting in the city of New York about the 1st day of August instant, and selected your petitioner to proceed to the State of Wisconsin, and to petition said district court on their joint behalf, and protect their joint interest, as far as he might

in said court; and your petitioner files this petition for the benefit of said persons, and for the equal benefit of all the stockholders of said new company, and holders of said bonds not converted into stock of said new company.

That this suit is to foreclose a mortgage given to the complainants in this cause, and known as the second mortgage on the eastern division of said railroad, which is a lien upon said railroad and franchises prior to the rights of your petitioner as a stockholder of the said Milwaukee & Minnesota Railroad Company; and that said suit is intended and is prosecuted with the design of foreclosing and extinguishing all right which said Milwaukee & Minnesota Railroad Company has in and to the said railroad from the city of Mil-
75 waukee to Portage City, a distance of about ninety-five miles, and know as the eastern division of said railroad; that it became and was the duty of said Russell Sage, as president of said new company, to defend this suit, and protect the rights and interest of said new company, and the duty of N. J. Emmons, and each and every of the directors of said new company, to defend and protect the rights and interest of said new company in this suit; yet so it is, that said president, vice-president, and board of directors have made no defence to this suit on behalf of the said new company as such; and the default of said company is or may be entered in this cause, as your petitioner is informed and believes; that although defences to this suit have been put in by creditors, and by some stockholders holding a small amount of stock, yet your petitioner is informed and believes that negotiations have been conducted on the part of those interested to foreclose the said second mortgage with said creditors and stockholders, to induce said creditors and stockholders to withdraw from defending this suit; and that such negotiations may at any time succeed, and thus leave said suit undefended on the part of said Milwaukee & Minnesota Company; and your petitioner is informed and believes that N. J. Emmons, who is director, vice-president, and also the attorney of said company, so far from defending said suit, or the interests of said company therein, has appeared heretofore in said suit, and in connection with James S. Brown, esq., who is counsel for complainants, resisted the application of such creditors or stockholders for the appointment of a receiver in this cause; and your petitioner is informed and believes that said Sage is in collusion with those interested in foreclosing the said second mortgage, and thereby extinguishing the interests and rights of said Milwaukee & Minnesota Railroad Company in and to the said eastern division of said railroad, and that said Emmons acts in concert with said Brown in forcing this foreclosure, with full knowledge and by direction of said Sage.

Your petitioner further shows, and states to said court as evidence of said collusion—

1. That on the organization of said new company the whole of said railroad and franchises thereto appertaining were in the hands and possession of Selah Chamberlain, under a pretended lease, which made it the duty of said Selah to apply the earnings of said railroad to the payment of the very interest for non-payment of which this foreclosure is instituted, and that said Selah had sufficient funds in his

hands received under said lease, and which it was his duty to apply to the payment of said interest, to fully pay and extinguish the same, and thus to prevent this foreclosure; and that it was the duty of said Sage to have insisted upon and taken the proper legal steps to compel such application and payment, which he has wholly neglected to do.

2. That the meeting of the stockholders of said new com-
76 pany for the election of a new board of directors ought to have been held in May last; but that said Sage well knew that stockholders of said company were dissatisfied with his course, and deemed him dishonestly betraying the rights and interests of said company, and that they would therefore endeavor in said election, if held, to elect a new president of said company who would protect its rights; and fearing such result, and, as your petitioner believes, to prevent it, and thus continue in the control of said company until he could by the foreclosure in this suit extinguish the rights of said company, he, the said Sage, neglected to call and notice, or to have called and noticed, the regular and annual meeting of said stockholders for the election of directors, and so in his own wrong continues president of said railroad company, although laboring to extinguish and destroy its rights, which he was elected to protect.

3. That said Sage has been repeatedly requested by stockholders of said company to resign his presidency of said company, to the end that another man might be elected in his place who would protect and not destroy the rights of said company, and that said Sage refuses and neglects so to do.

4. Your petitioner further states, on information and belief, that said Sage has been trying to induce those who are making defence to this foreclosure to settle or sell out their claims and then withdraw their said defence; and that said Sage has advised with the agents of those who are interested in this foreclosure, and is doing all in his power to aid, further, advance, and accomplish said foreclosure and said extinguishment of said company's rights; and that he has been for months laboring to produce the belief that said company's rights were invalid or worthless, and thereby prevent any action of the stockholders of said company to defend this suit.

5. This petitioner states on his own knowledge that very soon after the said Sage was elected president, as aforesaid, he represented to those who were stockholders of said company that said stock was almost worthless, and on information and belief says that said Sage did this with a view and design to thereby reduce the market value of said stock and buy the same himself at mere nominal sum and price.

6. That said Sage has frequently used the influence of his position as president, as aforesaid, to prevent a compromise with the second mortgage bondholders, to bring about a fair and equitable compromise of the interests of all mortgage creditors of said La Crosse & Milwaukee Railroad Company, which would have prevented this foreclosure, showing a leaning towards and secret preference for this foreclosure; and in some instances which have come to the knowledge of your petitioner openly expressed his preference for such sale, without having made any provision for the protection of the stockholders of said Mil-

waukee & Minnesota Railroad Company under such sale, clearly showing a deliberate design to defraud said stockholders.

77 7. That since your petitioner left New York he has seen a correspondence with gentleman in New York endeavoring to induce said Sage to come to this district and undertake, on behalf of the said new company, its defence in this suit, or to resign, and thus enable the board of directors to elect his successor to do so; but that although this petitioner has seen numerous letters giving assurance that said Sage would be in Milwaukee on different days during the last week, yet the said Sage has not appeared, and this petitioner does not believe that he intends to or will come, or make any defence whatever to said suit.

Your petitioner further shows that he is advised and believes that the interests of said Milwaukee & Minnesota Railroad Company require that said company should answer the bill of complaint in this cause, and file a cross bill in said cause impeaching the rights of said complainants to the relief demanded in this cause, and resisting the same, and demanding discovery for that purpose.

Your petitioner further shows, on information and belief, that many of said bonds secured by said so-called second mortgage were disposed of to, and many of them now are held and pretended to be owned by, persons who hold and own the same fraudulently, and are not entitled to the same; and that Selah Chamberlain is one of the persons who are interested in the foreclosure in this cause, and aiding and contributing to carry on this cause; that said Chamberlain ought to have paid this very interest, for the non-payment of which this foreclosure suit is instituted, and has fraudulently omitted so to do for the purpose of accomplishiug the foreclosure of said so-called second mortgage, and that said Chamberlain received, and now has or controlls, two hundred thousand dollars in amount of said bonds which he never paid any value to said La Crosse & Milwaukee Railroad Company for, but received the same in pretended settlement of a claim which was illegal and unfounded in law and in fact; that James T. Soutter, one of the trustees and complainants in this cause, received and now holds or controlls fifty-five thousand dollars in said bonds described in the bill of complaint in this cause, and secured by said so-called second mortgage, which he holds fraudulently, as follows: that said bonds, secured by said second mortgage, were, when executed by the company, delivered to said trustees to be signed by them, and that said Soutter kept and retained said fifty-five thousand dollars in said bonds wrongfully, and without any right or authority, and pretends that the same are legal and valid bonds, to be protected in this suit; and this he did on pretence that the company owed him certain sums of money, secured by worthless, unsecured, and illegal securities, which said worthless securities he surrendered to the said company.

That Prentiss Dow is interested in said foreclosure, and is agent of the trustees and complainants, and aiding and counselling said foreclosure, and that said Dow, while financial agent of the La

78 Crosse & Milwaukee Railroad Company, took fourteen thousand dollars in said bonds, secured by said second mortgage, and appropriated the same to his own use, and claims to own and hold the

same, and that said company never received from said Dow therefor to exceed one thousand dollars in money, as this petitioner is informed and believes, and so states; and that the balance of said fourteen thousand dollars was made up to said company in what said Dow styles discounts, sundries, &c., and that of that amount sundries forms a large part, as petitioner is informed and believes.

And said petitioner is informed and believes, and so says, that said bonds secured by said second mortgage, so called, were squandered and wasted by the fraudulent conduct of the said trustees, officers of said company, and those who now pretend to own them, so for that but little more than thirty per cent. of the nominal amount of said bonds was ever realized in money by said company therefor; and this petitioner shows that he is informed and believes that if a cross bill were filed in this cause, and the said trustees compelled fully to discover touching the same, so it would appear; and this petitioner submits to the court that no more than what has been *bona fide* paid by said bondholders for said bonds can or should be received by said bondholders on said bonds, and that they should only be allowed interest on such amount; and that if the proper defence were made, and cross bill filed for discovery to aid said defence, all these matters can be ascertained, and that the earnings of said road now in the hands of the receiver in this cause will be sufficient to pay all the said interest that may or can be received as aforesaid within a very short time.

Your petitioner is advised and believes that the said eastern division of said railroad is worth, at least, one million dollars over and above the incumbrances thereon prior to said third mortgage; that is, that the interest of said Milwaukee and Minnesota Railroad Company, in said eastern division, is worth one million dollars, and that the revenues of the same will pay for operating, and repairs and interest on that sum; and in this belief he is strengthened and confirmed by the opinion of the receiver in this cause, expressed to this petitioner. Your petitioner further states that he has seen what he is informed and believes to be the programe of those who are interested in this foreclosure, and thereupon believes that this million interest of said Milwaukee and Minnesota Railroad Company is to be divided among the conspirators Chamberlain, Sage, Dow, and others.

Your petitioner further shows that no application has been made by your petitioner at an earlier day because he has been indulging the hope that said Sage would either resign his presidency of said company, or attend to the duties of it by putting in a defence in this cause; but that it has become perfectly apparent that said Sage does not design to do so, and will not in good faith attempt it;
79 and this petitioner believes that if any defence should be pretended to be set up under said Sage's direction, that the same would be a fraud and a show, and fraudulently conducted, so as to aid, and not resist, said foreclosure.

Your petitioner prays said court for leave to put in an answer for said Milwaukee and Minnesota Railroad Company in this cause, and that said company may have time, at least thirty days, to perfect the same and prepare a cross bill, as shall be necessary.

And that your petitioner may have such other and further relief as may be agreeable to equity.

A. FLEMING,
By MAT. H. CARPENTER, *Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he has heard read and knows the contents of the foregoing petition, and that the same is true except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

A. FLEMING.

Subscribed and sworn to before me this 13th day August, A. D. 1860.

J. M. MILLER, *Clerk.*

DISTRICT OF WISCONSIN, *ss:*

A. Fleming, being first duly sworn, on oath says that he is informed and believes that said Prentiss Dow has remitted to the trustees, complainants, $5,742 dollars 87 cents to apply on the interest on this mortgage, and now has 28,830 dollars 04 cents received out of the revenues of said road, which ought to apply on said interest.

A. FLEMING.

Subscribed and sworn to before me this 14th day of August, A. D. 1860.

J. M. MILLER,
*Clerk U. S. Di. Ct., Wis.*

DISTRICT OF WISCONSIN, *ss:*

N. P. Stanton, being first duly sworn, on oath says that he was from 9th April, A. D. 1858, till the sale in the foregoing petition mentioned, president of the La Crosse and Milwaukee Railroad Company, and that he is acquainted with the nature of said company's railroad, its business, revenues, expenses, and profits; and that, in his opinion, the eastern division of said railroad is worth over and above all liens and incumbrances thereon, prior to the third mortgage so called, at least one million dollars, and that the interest of said Milwaukee and Minnesota Railroad Company therein is worth that sum; and that its revenues will pay for operating and repairing the same, and pay interest on all prior incumbrances, as aforesaid, and upon said one million dollars.

N. P. STANTON.

Subscribed and sworn to before me this 13th ——, 1860.

J. M. MILLER, *Clerk, &c.*

And the said petition having been argued by counsel, it is thereupon ordered by the court that the said A. Fleming have leave to put in an answer in the name of the Milwaukee and Minnesota Railroad Company within twenty days.

79*a* And same day (August 16, 1860,) the following affidavit was filed in behalf of the complainants:

*Affidavit of P. Dow.*

District court of the United States for the district of Wisconsin.—In equity.

GREENE C. BRONSON AND JAMES T. SOUTTER, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD CO'Y and others.

DISTRICT OF WISCONSIN, *ss:*

Prentis Dow, being duly sworn, deposes and says that he has read the petition of A. Fleming filed in this suit; that deponent, at and since the institution of this suit, has acted as the agent and attorney of the complainants, and still acts in that capacity; that the said complainants and this deponent, as their agent, has acted for the sole purpose of securing to the bondholders the payment of the interest already accrued and hereafter to accrue upon the bonds held by them respectively, and that deponent represents no class of said bondholders or any particular interest therein; but, under his instructions from the complainants, has sought only to enforce the payment of interest on the said bonds described in their complaint, or on such of them as this court should direct, and that he has had and now has no other aim or object.

Deponent further states that in the month of November last this deponent, with one Francis A. Palmer, came to Milwaukee as the agents of the complainants, to secure from Selah Chamberlain the proper application of the earnings of the road to the payment of the interest on the mortgage represented by the complainants and other prior liens, and to enforce the same through the aid of this honorable court; that on or about the 30th day of Nov'r, 1859, a contract, of which a copy is hereunto attached, was entered into between these complainants, by their attorneys, Francis A. Palmer and this deponent, and said Chamberlain, by which the earnings of said road were to be paid over to these complainants, and that the said agreement is the only agreement of any kind or nature, written, parol, express or implied, existing, or at any time in existence, between said Chamberlain and these complainants, or between the said Chamberlain or any one in his behalf and this deponent, or any one in behalf of this deponent.

This deponent further says that the said Russell Sage, named in the petition of said Fleming, has neither directly nor indirectly had anything to do with the mangement of this suit of these complaints, and that no understanding or agreement of any sort or kind, direct or implied, exists or ever has existed between said Sage and this de-

ponent, and that the said charge of conspiracy is utterly and entirely false, and that the sole object of this deponent has been the protection of the bondholders under the mortgage or deed of trust to these
79*b* complainants. Deponent further says that the complainants and this deponent, as their agent, has always been willing to receive from any subsequent incumbrances the interest in arrear on the said bonds, and on any arrangement being made whereby the future payments of interest to accrue would have been secured to discontinue their suit. This deponent further says that he never held the office of financial agent of the La Crosse and Milwaukee Railroad Company; that his sole appointment at and previous to the issue of the so-called second mortgage bonds was that of transfer agent for the transfer of the stock of the company in the city of New York, which appointment was terminated on or about the first of October, 1857. This deponent further says that he, after the termination of his said appointment of transfer agent, and when he held no office or employment from the said company, purchased and received therefrom thirteen thousand dollars of the said so-called second mortgage bonds, and paid for the same the sum of eleven thousand four hundred dollars in cash, and the valid bonds and securities of said company being at the rate of more than eighty-seven per centum upon the face or par value of the said bonds so purchased and received from said company.

This deponent further says that he, long before the commencement of this suit, parted with all of said thirteen bonds, and has not now, nor, since this suit was commenced, has he had any interest in them or either of them.

This deponent further says that he is informed and believes, and so states, that the said La Crosse and Milwaukee Railroad Company, by its vice-president duly authorized, received payment in full for the bonds said to have been wrongfully held by James T. Soutter, and that a proper discharge was given therefor, the following being a full, true, and accurate copy of such receipt or discharge, viz:

"OFFICE OF LA CROSSE AND MILWAUKEE R. R. Co.,
"*New York*, 14*th Septem.*, 1858.

"Received from James T. Soutter fifty-five thousand dollars in bonds of this company, viz: $37,000 7 per cent. convertables, 18,000 8 per cent. farm mortgages, both with full coupons from 1st Jan'y last inclusive, which bonds are received in full payment of a similar amount ($55,000) of the 8 per cent. 2d mortgage bonds of this company, (of the $1,000,000 issue,) and which it was heretofore agreed he should have in exchange, and which were some time ago delivered to him, but the bonds to be given up by him were not received until this day.

"WM. A. GUEST.
"*Chairman and Vice-President.*"

This deponent further states that he is informed and believes, and therefore states upon information and belief, that the so-called third mortgage of the La Crosse and Milwaukee Railroad Company was gotten up by one N. P. Stanton, of Albany, and his associates, and the bonds purporting to be secured thereby issued with the sole object and design of covering up the frauds which the directors of said

company had committed upon said company in the issue of mil-
79c lions of spurious stock and bonds, and to wipe out the old stock, and to cut off the floating debt due from said railroad company, and not for the benefit of the interests or property of said company. This deponent further says that more than seven hundred thousand dollars of the said third mortgage bonds were disposed of among their particular friends by the Albany directors, under the presidency of said N. P. Stanton, by pledging the same as collateral to debts or pretended loans at the rate of five cents on the dollar; and that other large sums were in like manner, as this deponent is informed and believes, divided among parties who had no valid claims or demands against said company, and that the books of said company will exhibit the details of the same. This deponent further states that he is informed and believes that the said Milwaukee and Minnesota Railroad Company, so formed by these so-called third mortgage bondholders, in following out the sole object and design of their creation, did, by its board of directors, execute releases to several of the said former directors, discharging them from their just liabilities for acts, claims, and frauds committed by them while acting as directors of the said La Crosse and Milwaukee Railroad Company. This deponent further says that he has been informed, and therefore states upon information and belief, that the board of directors of the so-called Milwaukee and Minnesota Railroad Company being advised by their counsel that the said third mortgage having been made by its *its* terms and provisions expressly subject to the priority of said second mortgage, which priority was also endorsed upon each bond issued, and therefore could not be called in question, then proposed by resolution to request said Selah Chamberlain, then in possession of said road, not to pay the interest then soon after to become due; and that said resolution being opposed by Hans Crocker, esq., then a director, was abandoned, but the request was nevertheless made by a large majority of said board individually. This deponent is informed, and upon such information and belief states, that the failure and refusal of said Chamberlain to pay the interest on the said second mortgage bonds last September was with the full approbation and concurrence of the said Milwaukee and Minnesota Railroad Company, in order that such non-payment might reduce the value and frighten the holders of said second mortgage bonds and the land grant bonds into accepting a small percentage of the same, and recognition of the validity of said third mortgage, and the organization of the holders of the bonds. This deponent further says that before and after the default of September 1, 1859, upon said second mortgage bonds, the said Sage and others, owning or representing said third mortgage bonds, threatened the holders of said second mortgage with contests for delays unless something should be done to protect them; repeatedly stating that while they knew their defence would in the end avail nothing in this court, yet they
79d would annoy us in the prosecution of our suit, by interposing delays, until we were wearied into a compromise of some kind.

Further this deponent saith not. PRENTIS DOW.

Sworn and subscribed before me this 14th day of August, 1860.

J. M. MILLER, *Clerk U. S. D. C. Wis.*

*Copy of agreement.*

Green C. Bronson and James T. Soutter, of the city and State of New York, trustees named in the mortgage or deed of trust made by the La Crosse and Milwaukee Railroad Company on the 17th day of August, 1857, to secure the payment of the bonds of the company to the amount of one million of dollars therein mentioned, and the interest on the same, by the terms of which mortgage or deed of trust the trustees, upon default made by said company or its assigns, in the payment of the interest warrants or coupons on said bonds, or any of them, claim the right to demand and receive possession of all and singular the railroad and other property covered by and included in the said mortgage or deed of trust, and to sell the same as therein provided; and Selah Chamberlain, who is in possession of that portion of the railroad and other property pertaining thereto, covered by and included in said mortgage or deed of trust extending from Milwaukee to Portage City, as well as the western end of the so-called The La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, and is operating said road or roads under and by virtue of a sealed instrument commonly called a lease or mortgage executed by the La Crosse and Milwaukee Railroad Company, dated September 26th, 1857, by the terms of which instrument the said Chamberlain was directed by the said company, and did stipulate among other things to be done and payments to be made, that he would, from the net earnings or revenue of the said railroad, pay the interest warrants or coupons upon the said one million dollars of the bonds described in said mortgage or deed of trust, as the same should become due and payable; and default having been made upon the interest warrants or coupons aforesaid due and payable at the Bank of the Republic in the city of New York on the first day of September, 1859, and the said trustees having, in consequence of such default, for the space of more than sixty days, become entitled to demand and have demanded possession of the said railroad and other property covered by and included in said mortgage or deed of trust from the said Chamberlain; and said Chamberlain claiming the right to retain the possession of the said railroad and property, and to operate the same during the progress of legal proceedings for the foreclosure and sale of the same by said trustees, and being willing that the earnings and revenues of said railroad and the disbursements of the same according to the terms and spirit of the provisions of the instrument under
79e which his right of possession accrued. And the said trustees being desirous of satisfying their bondholders or cestui que trust under the said mortgage or deed of trust, of the application of the entire receipts and revenues of the said railroad and property to the purposes expressed in the instrument, lease, or mortgage, under and by virtue of which said Chamberlain holds possession of said road, and the said Chamberlain being willing that they should enjoy every facility thereto, and both parties being desirous of avoiding litigation as far as the same can be done, do agree to and with each other as follows:

First. The said Selah Chamberlain shall retain and have the actual possession, to all intents and purposes, of the said railroad and other premises and things to him granted in and by the said instrument of lease or mortgage, and the control and management of the railroad in its various departments, as is intended he should have in and by said instrument of mortgage or lease, reference being hereby made to said lease or mortgage, and the supplemental or explanatory part thereof, between said Chamberlain and the La Crosse and Milwaukee Railroad Company, by an instrument dated September 28, 1857, and the resolution of said company dated the 21st day of October, 1858, but the said Chamberlain does agree, and in order to carry out the intent and purpose aforesaid, that he will cause to be paid to or deposited with the said trustees, or with such agent or cashier as they may nominate and appoint, all the earnings and revenue of said railroad—that is to say, all the earnings and revenue of the eastern division of said road, of which said Chamberlain is in possession, including all the revenues or receipts from the use of the rolling stock on any other part or portion of the so-called La Crosse & Milwaukee railroad, from day to day, as the same may be earned and received, and to that end, intent, and purpose will instruct the officers, agents, and servants under him; and the said trustees, on their part, do covenant and agree that they will appropriate, pay out, and disburse the earnings and revenues of said eastern division of said road, so by them to be received, or intended to be received, to the actual uses and purposes and objects intended and contemplated in and by the said lease or mortgage to said Chamberlain, and that they will so appropriate, pay, and disburse said earnings and revenues from day to day, or month to month, as the exigencies and proper operating of said road, or the other provisions in said lease or mortgage, may require. The operating expenses, to be paid by said trustees, as aforesaid, shall include those accruing during the month of November.

In order that the said trustees may actually have and enjoy the privileges and right of circumspection over the earnings and revenues of said road, and the receipts, control, and disbursement thereof, as aforesaid, the said Chamberlain does agree that at any time or
79*f* times when, upon good cause shown to him by the said trustees that any officer, agent, or servant under him, who may, in his capacity, be in the receipt of any earnings or revenue, or in the auditing of any accounts or outlays, is, or has been, guilty of any wilful direliction of duty in his said employment as such officer, agent, or servant, he, the said Chamberlain, shall discharge such officer, agent, or servant, and appoint in his stead such suitable person as the said Chamberlain and the said trustees may agree upon, the said trustees having the right of nomination.

In order to facilitate and aid the said trustees in the enjoyment and exercise of the rights and privileges herein accorded and given to them, the said Chamberlain hereby agrees to furnish and give to them access to any and all books and papers relating to his management of said road the same as he is required to do to said La Crosse & Milwaukee Railroad Company under his said lease or mortgage. This agreement is to take effect on the first day of December, A. D. 1859.

It is further understood that the trustees may, if they see fit, make such allegations as they may be advised to entitle them to a receiver, and also may file the usual motion therefor, but no receiver shall be appointed, and no further steps shall be taken therefor so long as the said Chamberlain shall continue to act upon and fulfil this agreement; and in case of the violation of any material part hereof, then said trustees may proceed for a receiver the same as though this agreement had never been made. And the said Selah Chamberlain further agrees that he will not, during the continuance of this agreement, part with or transfer the possession of said road, nor any of its equipment, covered by and included in the said mortgage or deed of trust, to any person or persons, or corporation whatever, unless upon payment to him by the La Crosse & Milwaukee Railroad Company, or those lawfully claiming under it, the right to redeem said Chamberlain's incumbrance and claim from him his said possession, in which case this agreement shall cease and determine.

It is agreed that the proceedings to foreclose shall be conducted amicably so far as the parties hereto are concerned, and that their respective counsel shall aid in carrying out the spirit of this agreement. A decree of foreclosure may be procured by the joint efforts of the counsel of both parties to secure, if practicable, the sale of said road and premises, subject to the mortgage or deed of trust hereinbefore mentioned, and with the view of giving and securing to said Chamberlain every facility in becoming the purchaser under such foreclosure, (provided that nothing herein contained shall preclude the trustees from bidding at such sale for the protection of the interest of the bondholders.) The trustees will make no opposition to the establishment by said Chamberlain of his claims upon the said La Crosse & Milwaukee Railroad Company as next in order to
79*g* said mortgage or deed of trust; and if this form of decree should prove impracticable or be refused by the court in which proceedings may be pending, the trustees will consent to any other form of decree which the counsel for the respective parties hereto may think best adapted to protect the claims and interest of said Chamberlain in the right of standing next in order to the said mortgage or deed of trust, securing, however, to the bondholders under the same all their rights of priority.

If the said Chamberlain shall become the purchaser of the road and property aforesaid under a decree of foreclosure and sale, the trustees will extend a credit of nine and twenty-four months upon so much of the arrears of interest as may remain due to the holders of the one million of dollars of the bonds of said company, issued under and secured by the aforesaid mortgage or deed of trust, and be included in the decree of foreclosure and sale, not exceeding in amount two coupons in each bond and receipt for the same to the officer making such sale as so much cash, taking from the said Chamberlain such reasonable security for the payment thereof and the interest thereon, at the rate of eight per cent. per annum, as may be satisfactory to the trustees, but such security shall be perfected by the said Chamberlain on or before the time of the making of such sale.

The said trustees shall, as far as practicable, procure from the bond-

holders represented by them full and perfect authority to make such arrangements for the liquidation, exchange, or payment and cancellation of their said bonds as may best promote the objects to be obtained by the foreclosure of the mortgage or deed of trust, and perfecting the sale of the road and property covered by and included therein, and shall, if possible, procure the said bonds to be deposited with them in trust for the accomplishment of these objects.

It is understood and agreed that whereas the said trustees are acting in such a capacity as to limit the responsibility assumed by them within the scope of powers conferred by their trusts, that they shall only be held liable for the use of their best exertions in good faith to carry out their part of this agreement to the full extent of their powers as trustees, and when the stipulations cannot be either legally or practably performed, or when by the performance the trustees would render themselves personally responsible to the bondholders, that they shall be held released and absolved therefrom.

In testimony of all which, the parties to these presents have hereunto set their hands and seals, at Milwaukee, this thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) GREENE C. BRONSON. [L. S.]
JAMES T. SOUTTER. [L. S.]

By their attorneys in fact:

F. A. PALMER,
PRENTIS DOW,
SELAH CHAMBERLAIN. [L. S.]

80 And afterwards, to wit, on the 1st day of September, came the defendant, the Milwaukee and Minnesota Railroad Company, by A. Fleming, and filed its answer, which is as follows:

*Answer of the Milwaukee and Minnesota Railroad Company.*

In the district court of the United States for the district of Wisconsin.—In equity.

The separate answer of the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint of Green C. Bronson and James T. Soutter, trustees, complainants:

Leave of said court having been obtained on the petition of A. Fleming, one of the stockholders of the said Milwaukee and Minnesota Railroad Company, one of the defendants to file an answer for and on behalf of the said company to the said bill of complaint, therefore the said Milwaukee and Minnesota Railroad Company, one of the defendants to the said bill of complaint, saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and irregularities of the said bill of complaint, for answer thereunto, or unto so much and such parts thereof as the said defendant is advised, is or are material for it to make answer unto, *answering*, *says*, that it admits upon information and belief, that the defendant, the La Crosse and Milwaukee Railroad Company,

at the time and in the manner in the said bill stated, executed its bonds to the number and amount, and of the description therein stated, and also executed, duly acknowledged and delivered to the complainants its mortgage or deed of trust, as set forth in said bill, for the purpose of securing the payment of the principal of the said bonds, and the interest to become due thereon, and also that the instalment of interest which became due and payable upon said bonds on the 1st day of September, A. D. 1859, was not paid by said last named defendant, or by any one for it, and that the interest which has since accrued thereon has not been paid.

This defendant, further answering, states and shows to the court, upon information and belief, that the said La Crosse and Milwaukee Railroad Company, defendant, on the first day of September, 1857, and at the time of the execution of the said several bonds, and of the execution and delivery of the said mortgage or trust deed, set forth in the said complainants' bill of complaint, was very largely indebted and very greatly embarrassed in its pecuniary affairs, and then was, as this defendant is informed and believes, wholly insolvent and unable to pay its debts.

This defendant, further answering, states and shows to the court, upon information and belief, that the said mortgage or trust deed, and the said one thousand bonds, to which the same is collateral
81 security, were gotten up, contrived, and executed by the said railroad company, by its then acting board of directors, when the said company was well known to the said board to be greatly embarrassed in its pecuniary condition and affairs, for the corrupt and fraudulent purpose of disposing of said bonds, or a large part thereof, in payment of pretended debts to the officers and agents of said company or their friends without any consideration to be paid therefor, or in exchange for the stock of said company, then of little or no value, held by its officers and agents or their friends; and that, in point of fact, a large part of said bonds were so disposed of or given away in violation of the true intent and meaning of the charter of said company and the laws of said State of Wisconsin, and in fraud of the stockholders and creditors of said company; that two hundred of said bonds, being those numbered from 651 to 825, inclusive, and from 851 to 875, inclusive, were given and delivered by some of the officers of said company to the defendant, Selah Chamberlain, in pretended payment or satisfaction of a claim of said Chamberlain for services rendered to said company, or for damages sustained by him, for the discontinuance, breaking up, or surrender of a contract or contracts between him and said company, which claim was wholly unfounded as a valid claim against said company, and was greatly over estimated for the fraudulent purpose of enabling him to take and hold said bonds. And this defendant insists that said 200 bonds ought to be surrendered and cancelled; that one hundred of said bonds were given to Seth R. Foster, of the city of New York, as a security for a pretended indebtedness to him on the part of said company, but that in truth and in fact said company was not indebted to said Foster on a fair settlement of accounts in any sum whatever, but said Foster was largely indebted to said company, and the same was well known

to the president and other officers of said company when said bonds were delivered to him; and that said bonds were so delivered and given to him, fraudulently, without any good or valuable consideration therefor, and this defendant insists that the same ought to be surrendered and cancelled; that the said James T. Soutter, one of said complainants, has and holds, or claims to control, fifty-five of said bonds, which he obtained as follows: that when said bonds were prepared and executed on the part of said La Crosse and Milwaukee Railroad Company they were delivered to said trustees, complainants, to be signed by them; and that said James T. Soutter retained of said bonds said fifty-five bonds, and refused to deliver the same over to said company, and that he did this without any right or authority whatever, but that said Soutter pretended that said company owed him certain sums of money, specified in worthless, unsecured, and illegal bonds, which said bonds said Soutter pretended then and there to pass back to said company; and that said Soutter gave and paid no value whatever for said fifty-five bonds, but that said Soutter fraudulently pretends that said fifty-five bonds are legal and valid bonds, and secured by said mortgage mentioned in said bill of complaint; that fifteen of the said bonds were delivered to the com-
82 plainant, Green C. Bronson, in exchange for the stock of said company, and were pretended to have been sold to him for the stock of said company, which stock was at the time said bonds were delivered to said Bronson nearly or wholly worthless; and this defendant insists that neither the said company nor its directors, officers, or agents had any authority, power, or right whatever to purchase from said Bronson said stock for or on behalf of said company, and pay therefor with the money or property or bonds of the said company; and that said pretended sale of said 15 bonds to said Bronson was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled; that about six hundred of said bonds were sold and disposed of by the officers of said company at the nominal price of 80 cents on the dollar, as follows: forty cents on the dollar of the amounts specified in the said bonds respectively was paid in money, and forty cents on the dollar of said amount in the bonds of said company, known as "Barstow bonds," or the said bonds known as "corruption bonds," or in the stock of said company; and that the said company received for said six hundred bonds only about one hundred and ninety thousand dollars in cash; and that it received in the said bonds, known as "Barstow bonds" or "corruption bonds," and mostly in said "Barstow bonds," so called, about one hundred thousand dollars, and the remainder, to make up said eighty cents on the dollar, in the stock of said company; and that said "corruption bonds," and said "Barstow bonds," and said stock were then of no value, or a mere nominal value, and this defendant insists that neither the said company nor its directors, officers, or agents had any authority, power, or right to sell said bonds and receive the depreciated capital stock of said company in part payment therefor; and that all of said six hundred bonds disposed of as aforesaid are fraudulent and void, and ought to be surrendered and cancelled.

And this defendant, on information and belief, charges and avers the

fact to be that the aforesaid several parcels of said bonds, so as aforesaid issued, transferred, sold, given away, or delivered, were so fraudulently issued, transferred, sold, given away, or delivered by the board of directors, or by the officers or agents of said company, without lawful right or authority, to bind the company in that respect; and that said bonds are wholly void in whosesoever hands they may be, and said company is not bound in law to pay the same, or the interest accrued or to accrue thereon.

This defendant, further answering, on information and belief, shows to the court here that one Prentiss Dow, who pretends that he is interested in this foreclosure suit, and is the agent of said complainants in the conducting of said foreclosure suit, and that said Dow, while agent of said company, took fourteen of said bonds, for which said company received less than one thousand dollars in money, and that said bonds are void and ought to be cancelled.

This defendant, further answering, states and shows to the court, that he admits that the said La Crosse and Milwaukee Railroad Company, by its board of directors, on or about the 27th day of
83 September, 1857, executed and delivered to the defendant, Selah Chamberlain, the said instrument in writing, called a lease, as set forth in the complainants' said bill of complaint, and which a copy is annexed to said bill of complaint; that in and by said lease the said Chamberlain was required, among other things, to provide for and pay the accruing interest on the 1,000 bonds described in the said bill, whenever and as often as any instalment thereof should become due; that the said board of directors immediately after the execution of said lease put the said Selah Chamberlain in possession of its line of railroad from Milwaukee to La Crosse, and all its lands, fixtures, rolling stock, and personal property used or connected therewith; and that said Chamberlain since that time till the commencement of this suit has had possession of the same; and that the said company at the time of executing the said lease was entirely and hopelessly bankrupt, as stated in said bill of complaint; but this defendant is advised and believes, and therefore states and insists, that the said La Crosse and Milwaukee Railroad Company had no lawful power or authority to make said lease or conveyance, and that the same is void in law.

And this defendant states, upon information and belief, that the said company, being at the time wholly insolvent, as aforesaid, and wholly unable to carry on the construction of its road, or to operate and manage the parts thereof which were then completed, its board of directors made the said lease to the said Chamberlain, as he, said Chamberlain, then well knew, with the express intent and purpose to hinder, delay, and keep off its creditors while, through the agency of the said Chamberlain as its pretended lessee, it could carry on the construction of its railroad, direct and control its management, and receive the income, tolls, and profits of its business, and thus prevent or avoid the attachment of its property and the interruption of its operations, which said board of directors then apprehended from its creditors; and that said lease was made and delivered to the said Chamberlain, at the day of its date, with the intent and purpose on

the part of the said board of directors, acting for said company, of hindering, delaying, and defrauding its creditors, as the said Chamberlain then well knew, and that the said Chamberlain fraudulently designed and intended to aid the said board of directors and said company in this hindering, delaying, and defrauding its creditors, entered into and accepted said lease from said board of directors; and this defendant therefore insists that said lease is fraudulent in fact and in law, and is of no binding effect as against said company, its stockholders and creditors.

And this defendant further, in like manner, states and insists, that said lease and the possession and control of said company's railroad, rights, franchises, and property under the same, acquired by the said Chamberlain as aforesaid, has hindered and delayed, and does hinder and delay, the creditors of said company, unreasonably, in the collection and enforcement of their rights, debts, and damages against the said company, and creates trusts for the benefit of said company to an unlimited amount, and that the same is therefore void in law as against this defendant and the creditors of said company,
84 without regard to the intention or design of the parties to said lease or instrument in writing.

This defendant, further answering, on information and belief, states and shows to the court, that in this district court of the United States for the district of Wisconsin, on the second day of October, 1857, the said La Crosse and Milwaukee Railroad Company, by its board of directors then acting for it, the said board of directors further designing to hinder, delay, and defraud its creditors of the enforcement of their rights, debts, and damages against it, and to aid, brace up and give additional color to the rights of said Selah Chamberlain under said pretended lease, and thus enable him to more successfully and certainly to aid the said board of directors in their fraudulent design to hinder, delay, and defraud the creditors of said company, as aforesaid, did confess to said Chamberlain, and suffer to pass against it, a judgment in his favor, and against said company, for the sum of six hundred and twenty-nine thousand eighty-nine dollars and 72 cents damages, and 15 dollars and 50 cents costs, which said judgment, fraudulently suffered and confessed as aforesaid, was in form regularly docketed in said court on the day and year last aforesaid; and that the said Chamberlain sought the said judgment to aid him in his possession and claim of right under said lease, before then known to him to be fraudulent as aforesaid, and that said company was not at the time indebted to him, said Chamberlain, in any such sum as the amount of said judgment, but that a large sum, to wit, two hundred thousand dollars, part of the pretended debt and claim on which said judgment was confessed and suffered as aforesaid, was wholly fictitious, as the said Chamberlain well knew; and that the said Chamberlain well knew when the said judgment was confessed and suffered as aforesaid that the said company, by its said board of directors, intended thereby to hinder, delay, and defraud its creditors, and that the said judgment is therefore fraudulent in law as against this defendant and the creditors of said company.

And this defendant, further answering, states and shows to the

court, on information and belief, that said Selah Chamberlain, after entering into the possession of the said railroad until the commencement of this suit and the exhibiting of said bill of complaint, took and received all the tolls and profits, income and revenue of said railroad and other property described in said lease or conveyance in writing, and that under said pretended lease he received of such tolls, income, and revenue a large amount of money over and above the actual and necessary expenses of operating the said railroad and keeping the same in repair, more than sufficient to pay the accruing interest upon the several mortgages in said lease specified, including the said mortgage or trust deed to the said complainant; and the said Chamberlain received, during the months of September, October, and November, 1859, of such tolls, income, and revenue, over sixty thousand dollars per month over and above the current expenses of running and operating the said railroad during the said three months, all of which was nett profits, and all of which, or so much thereof as was necessary or proper, he, the said Chamberlain, was bound
85 by the terms of said lease to use and apply in paying the interest due and unpaid upon the bonds described and set forth in the complainants' said bill of complaint, but that the said Chamberlain has wilfully and fraudulently neglected so to pay the interest due upon the said bonds, and has used and applied the said monies in payment of the pretended debts, so as aforesaid secured to him by said lease and judgment, or has retained the same fraudulently for his own private purposes.

This defendant, further answering, states and shows to the court, upon information and belief, that the said defendant, Chamberlain, with the fraudulent intent further to hinder and delay the creditors of the said company, and further to maintain, secure, and provide for his said pretended claims, rights, and interests under the said lease and judgment, did designedly neglect and omit to pay the interest due on the first day of September, 1859, on the 1,000 bonds mentioned in the complainants' said bill of complaint; he, the said Chamberlain, having received from the said tolls, income, and revenue of said company, and then having in his hands of said money so received by him under said lease more than sufficient money to pay the whole amount of said interest; and that, afterwards, and on or about the 20th day of November, 1859, the said Chamberlain did fraudulently contrive and combine with said complainants, or with one Prentiss Dow, the agent of the said complainants, and also the agent of the holders of about 600 of said bonds, and with the knowledge and approval of said complainants, to make the non-payment of the said interest the ground and occasion for the instituting of the present action, and the foreclosing of said mortgage or trust deed, executed as aforesaid to the said complainants, and to procure and effect a sale of the said railroad, with all its property, rights, and franchises, conveyed or purporting to be conveyed by said mortgage or trust deed, for the joint benefit, advantage, and profit of the said Chamberlain, the said complainants, and the holders of the said six hundred of the bonds secured by said trust deed; and that, with like fraudulent intent and purpose, he said Chamberlain, on or about the 20th day of November, 1859,

at the city of Milwaukee, did make and enter into an agreement in writing with the said complainants or with their agent, Prentiss Dow, and with the holders and owners of about 600 of the said bonds, who were represented by the said Dow, with the knowledge and approval of the said complainants, of the particulars of which agreement this defendant has not been informed, but the substance and effect of which was, as this defendant is informed and believes, that the said Chamberlain should aid and assist the said complainants in the prosecution of the present or a similar action to foreclose the said trust deed or mortgage, and in procuring a decree of this court for the sale of the mortgaged premises, and that at such sales the said Chamberlain should bid in and purchase the mortgaged premises, at the lowest price and sum practicable, and to take a deed of the same in his own name, and that the title to all the property, rights, and fran-
86 chises acquired by him, under the said decree and by means of said purchase, should be taken and held by him, according to the terms of said agreement, for the joint benefit, profit, and advantage of him the said Chamberlain and the bondholders represented by the said Prentiss Dow, without requiring the full amount or any considerable part of said bid to be paid in money; and that, under and by virtue of said purchase, the said Chamberlain should be allowed or secured a large share or interest in the said property, rights, and franchises, in payment or satisfaction for his aforesaid fraudulent and pretended claims, rights, and interests, under and by virtue of the aforesaid fraudulent lease and judgment.

This defendant, further answering, states and shows to the court, upon information and belief, that the said Chamberlain having in his possession or under his control sufficient moneys derived and received by him from the tolls, income, and revenue of said railroad, as hereinbefore stated, has, since the said 20th day of November, 1859, wilfully and designedly omitted and refused to pay the said September instalment of interest on the said 1,000 bonds for the purpose of aiding and effecting the aforesaid fraudulent scheme of foreclosing the said trust deed or mortgage, and securing to himself and his said associates the exclusive possession and ownership of the mortgaged property, rights, and franchises, in fraud of the rights of this defendant, and all other parties having rights or claims in or to the same; and that, in pursuance of the said fraudulent agreement, and by and with the aid and conivance of the said Chamberlain, the present action has been commenced and is now being prosecuted; and that the said Chamberlain has employed and retained therein learned and able counsel, and among others has employed the firm of Fenches, Lynde & Miller, and paid them a retaining fee of five hundred dollars out of the income of said railroad, which ought to have been paid upon the interest, for the non-payment of which this foreclosure suit is instituted, to aid in the prosecution of said action and secure the speedy foreclosure of said mortgage or trust deed and the sale of the mortgaged premises, as aforesaid; and that the same has been done with the fraudulent intent of hindering, delaying, and cutting off and extinguishing the rights and privileges and franchises of this defendant, and of hindering, delaying, and defrauding all creditors of said La

Crosse and Milwaukee Railroad Company, whose liens are subsequent to the date of said trust deed or mortgage, and to secure to himself a large share or interest in the mortgaged premises after such sale, in payment or satisfaction of his said pretended rights and interest under said fraudulent lease and judgment, and that the same has been done in pursuance of the aforesaid written agreement or of some other corrupt and fraudulent arrangement between the said Chamberlain and said Dow, by which the said Chamberlain is to acquire and have the same benefits and advantages, above set forth, in respect to his said fraudulent lease and judgment, as the result of said foreclosure and sale.

87 This defendant, further answering, says, that he is advised and believes, and therefore insists, that the present action has been procured to be commenced and is prosecuted by corrupt and fraudulent means and for fraudulent purposes, and is oppresive and unjust, as against this defendant; that the money and means in the hands of the said Chamberlain and received by him under and through the aforesaid false, fraudulent, and pretended lease and judgment, ought to be applied to the payment of the interest due and to become due on the bonds mentioned and described in the complainants' bill of complaint, so far as the said bonds, or any of them, shall be adjudged legal and valid; and that a receiver ought to be appointed by this court, with the usual and proper powers, to take charge of the said railroad and all the property conveyed in and by the said mortgage or trust deed, and to hold, manage, and operate said railroad and property, to receive the tolls, income, and profits thereof, and after paying the necessary expenses for repairs, and for running, managing and operating said railroad, to pay the residue of all such receipts into this court, to be applied to the satisfaction of said interest due on said bonds, as set forth in said bill of complaint, and the costs of said court.

This defendant, further answering, says, that the La Crosse & Milwaukee Railroad Company, defendant, is a corporation created by and existing under the laws of this State of Wisconsin, and that its business and affairs are managed and controlled by a board of directors; that about the 21st of June, A. D. 1858, the said company was indebted to a large amount, floating debt accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company, and that a large number of farmers along the line of said company's said railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of said railroad, which bonds and mortgages had been before then used by the said company, with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon, and that large sums of money, interest thereon, which said company was bound to pay as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest, and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did on about

the day and year last aforesaid make, sign, seal, execute, and perfect ready to be negotiated, sold, delivered, and transferred, in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day, and payable in A. D. 1888, with interest at 7 per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said
88 interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did on the said 21st day of June, A. D. 1858, make, execute, sign, seal, acknowledge and perfect its mortgage or deed of trust in due form of law to William Barnes, to secure the payment of said bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "All and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of lands which then were or thereafter might be, or constitute the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether then made or to be made thereafter, and all the engine houses, workshops, depots, and other buildings; and all the other improvements on or appertaining to said railroad, whether then made or built or to be built and made thereafter, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for, or used in connection with, such railroad.

And also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they related to said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21 day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

That on the 11th day of August, A. D. 1858, the said company made, signed, sealed and delivered to said Barnes, trustee, a certain indenture of supplementary mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust herein set forth and dated June 21,

1858, and did convey to said Barnes, as trustee as aforesaid, in mortgage as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say:

"All and singular the rights, privileges, liberties and franchises of said company of every kind and description.

And also all lands granted or intended to be granted to said
89 company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and all the heriditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed.

And also all and singular the stock, railroad or other bonds, bill of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature which might be owned or in which said company might have an interest, on such day as such company might first make default in the payment of the interest or principle or any part thereof which might thereafter become due, on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given.

That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded as and in the same offices as the said first named deed of trust or mortgage to said Barnes was recorded as hereinbefore set forth; a copy of which said first mortgage or deed of trust to said Barnes is hereto attached, marked Schedule "A," and a copy of said supplementary mortgage or deed of trust is hereto attached and marked Schedule "*B.*"

That immediately after said company commenced to deliver the said last named bonds, so secured as aforesaid, in payment of the indebtedness of said company and for the other purposes comtemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, delivered in payment and transferred by said company for the purposes and in the manner contemplated by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for said company; and that large numbers of said bonds are now held by such persons in the said State, as your orator is informed and believes; and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York.

That about the first of February, A. D. 1859, the said company having made default in the payment of a part of the interest due on said bonds, secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the State of Wisconsin then in force in that behalf, proceeded to the foreclosure of said mortgage by advertisement, and having given the notice required by law, on the 21st of May, A. D. 1859, said trustee sold at public auction, at the court-house in the city and county of Milwaukee in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mort-

gage to him, said Barnes, described, and became the purchase thereof, according to the provisions of the laws of said State of Wisconsin then in force in that behalf, at and for the sum of *one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-*
90 *three cents*, ($1,593,333 33,) no other person or body having made any bid whatever for the same; and that said mortgages became thereby foreclosed according to the provisions of the laws of said State of Wisconsin in that behalf then in force. And that said Barnes, by virtue of said purchase, and the provisions of the laws of the State of Wisconsin, then in force in that behalf, became the owner of the property and franchises so purchased by him and thereafter held the same in trust, and only in trust, for the holders of the outstanding bonds secured by said mortgage.

And that afterwards, to wit, on or about the 24th day of May, A. D. 1859, the owners and holders of the said bonds proceeded to organize anew, and then and there elected directors and took the corporate name "Milwaukee and Minnesota Railroad Company," and thereafter proceeded and conducted their business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and said Milwaukee and Minnesota Railroad Company thereby became and ever since has continued, as this orator is informed and believes, a corporation under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in the possession of said La Crosse and Milwaukee Railroad Company at the time of said sale and said organization of said new company.

And this defendant is informed and believes, and thereupon states to the court, that said bondholders at said new organization elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz: Russell Sage, N. J. Emmons, Wm. E. Smith, W. B. Gilbert, Hans Crocker, ——— Battershall, William Gould, S. R. Sill, and Lemuel W. Weeks, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president and Dwight W. Keyes secretary.

This defendant further states, on information and belief, that by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company, as hereinbefore set forth, that the said Milwaukee and Minnesota Railroad Company became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, and the owner of, and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action and effects of every nature and description, wherever situated and however circumstanced, subject only to such valid and legal and incumbrances thereon as were prior to said first deed to said Barnes, and that the said Milwaukee and Minnesota Railroad Company, as the creditor of said La Crosse and Milwaukee Railroad Company, has a right to object to, resist, and set aside

any and all conveyances, negotiations, sales, transfers, leases,
91 and mortgages which were made by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors.

MILWAUKEE & MINNESOTA R. R. CO.,
By A FLEMMING, *Stockholder.*

A. FLEMMING,
*Stockholder of the Milwaukee and Minnesota R. R. Co.*

DISTRICT OF WISCONSIN, *ss:*

On this 27th day of August, A. D. 1860, personally came before me Alexander Fleming, who being by me first duly sworn, deposed and said that he signed the foregoing answer of the Milwaukee and Minnesota Railroad Company; that he is a stockholder of said last-named company, and interposes his answer of said last-named company to the bill of complaint of Green C. Browson and James T. Soutter, complainants, in pursuance of leave for that purpose granted him by order of said district court of the United States for the district of Wisconsin; that he has heard the said answer read, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief of said last-named company, and that as to such matters he believes it to be true.

EDWARD KURTZ,
*United States commissioner, District of Wisconsin.*

*Schedule "A."—Trust Deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislalature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA *State of Wisconsin.*

No.——. $.——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of ——— dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in

the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *Secretary* ——— ———, *President.*

Registered and countersigned this——— ———, 185 .

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents, grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee,

and running from thence to La Crosse, a distance of about two
92 hundred (200) miles, a part of which road has been constructed

and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turn-outs, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine houses, workshops, depots and other buildings, and all the other improvements

on or appertaining to said railroad, whether now built or made, or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils and other personal property which have been or may hereafter be procured for or used in connection with said railroad; and also all and singular the rights, liberties, and privileges and franchies of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the City of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah, to the terminus of the road on the lakes or river St. Croix. To have and to hold, all and singular, the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed. *First.* Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made. *Second.* In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or

attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned. *Third.* Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee, all such further conveyances and assurances, and will do all such further acts and things, as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid. *Fourth.* Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be neccesary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing except as herein provided. *Fifth.* This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any monies which may be due to the trustee

shall be paid, the trustee will reconvey the said railroad company all this right, title, and interest of, in, and to the trust property.

*Sixth.* Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

93 *Seventh.* And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars. With such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

*Eighth.* The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection; nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

*Ninth.* All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

*Tenth.* The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the President or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

*Eleventh.* Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its [SEAL.] corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

LA CROSSE & MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President*,
LOCKWOOD L. DOTY, *Secretary of the La Crosse & Milwaukee Railroad Company.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse & Milwaukee Railroad Company.

EDWARD P. WHALING,
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely, for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal offi- [SEAL.] cial, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
*Commissioner of the State of Wisconsin in and for the State of New York.*

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes ac-
94 acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment, is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, [SEAL.] the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
*Commissioner of the State of Wisconsin in and for the State of New York.*

STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely, and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the Secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.]

E. MARINER,
*Notary Public, Milwaukee County, Wisconsin.*

Recorded July 8th, 1858, at 8 o'clock a. m.

*Schedule "B."*

Indenture, made the eleventh day of August, one thousand eight hundred and fifty eight, between the La Crosse and Milwaukee Rail-

road Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached, as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached, as aforesaid, together with the sections and parts of sections, designated by odd numbers, as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid. *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads. *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever. *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold

for less than double the minimum price of the public lands, when sold, nor shall any of said lands become subject to private entry, until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no otner, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

95 SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road, respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct. *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same. Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856." The people of the State of Wisconsin, represented in Senate and assembly, do enact as follows:

SECTION. 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete and perpetually to have, use, maintain, and operate railroads, with one or more tracts or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise and enjoy the same rights, privileges, functions, franchises, authority and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their pro-

ceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connecton with any and all other railroads, which may cross, come up to or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies. *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms. *And provided, also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madilake, between townships twenty-five and thirty-one, and from thence son or Columbus, by way of Portage City, to the St. Croix river or to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin, to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by

the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company. *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected; and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever. *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed, so as to admit running regular trains of cars on the same; and the governor of the State shall in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad
96 Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled. *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

Sec. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time and as fast as practicable be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

Sec. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad

Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate acount of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of the said company and other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal or mixed held by said company, and necessary for the operation of said railroad; and said lands, granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation, as herein provided, which lien of the State shall take precedence of all demands, judgments or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft, as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has, previous to the passage of this act, actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company, upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure or destroy; and the latter company shall pay to any such company, whose property or rights of property shall be thus taken, injured or destroyed, whatever the same is reasonably worth; such payment to be made in money, bonds, stock or lands, or in such other manner as said companies shall
97 mutually agree. And if the said companies cannot mutually agree upon the amount of compensation so made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers, so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person, and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine and award the amount of compensation which said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured or destroyed.

SEC. 11. This act and all grants herein contained shall cease and

be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for installments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which,

certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company, of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds, as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turn-outs, engine houses, workshops, depots, and of other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence
98 to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the roailroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a

distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given, to said La Crosse and Milwaukee Railroad Company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine houses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute or may hereafter constitute, or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter

become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and person and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired, or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, part of the first part, does hereby covenant, grant, bargain, promise, and agree, to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above described and granted premises, lands, tenaments, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises, above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations, lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

*First.* Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

*Second.* In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall
99 be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized,

in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and chosen in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week *for three weeks* at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be *required by the laws of the State of Wisconsin, the same shall be given.* And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

*Third.* Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

*Fourth.* Said railroad company shall cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

*Fifth.* The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above men-

tioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provisions herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.] La Crosse & Milwaukie R. R. Company.

LA CROSSE & MILWAUKIE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukie Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. WEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukie Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

100 STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La

Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely, for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. — Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING.
*Notary Public, Milwaukee County, Wisconsin.*

STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. — Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING.
*Notary Public, Milwaukee County, Wisconsin.*

STATE OF NEW YORK,
*County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract,

letter of attorney or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto; and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, [SEAL.] at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
*Commissioner of the State of Wisconsin in and for the State of New York.*

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

*September* 4, 1860.—This day came the complainants, by their counsel, and moved the court that the depositions of witnesses taken before Walter S. Carter, a master of this court, to be stricken from the files. And the said motion having been argued by counsel, it is thereupon ordered by the court that the said depositions be, and hereby are, stricken from the files. And it is further ordered by the court that the time for taking testimony be, and hereby is, extended to all the parties until the first day of November next.

*September* 19, 1860.—Report of receiver for the month of August filed.

And afterwards, to wit, on the first day of October, 1860, came the complainants, by their solicitor, and filed their replication to the
101 answer of the Mil. and Minn. R. R. Company as follows:

*Replication.*

District Court of the United States—In equity.

The replication of James T. Soutter and Greene C. Bronson, complainants, to the separate answer of the Milwaukee and Minnesota Railroad Company, one of the defendants, to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer to the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true—all which matters and

things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN,
*Sol. for Comp'ts.*

*October* 15, 1860.—Report of receiver for month of September filed.

*November* 7, 1860.—This day came the complainants, by their counsel, and moved the court that the order directing the service of the subpœna upon the cross bill filed in the name of the Milwaukee and Minnesota Railroad Company upon the solicitor of the complainants be vacated, and that the cross bill be set aside and removed from the files for reasons filed.

*November* 12, 1860.—Report of receiver for month of October, 1860, filed.

*November* 13, 1860.—This day came the complainants, by their counsel, and the city of Milwaukee, by Mr. Waldo, its counsel, and by consent it is ordered by the court that the receiver pay out of the earnings of this road in his hands the coupons payable in the month of September, 1857, and the month of March, 1860, on bonds of said city, issued in aid of the said company, and of the Milwaukee, Fond du Lac & Green Bay Railroad Company, and afterwards assumed by the La Crosse & Milwaukee Railroad Company, and also any other previous coupons on said bonds that may remain unpaid, if any.

*December* 8, 1860 —This day came the defendants, by their counsel, and on their motion it is ordered by the court that the time for taking testimony be, and hereby is, extended to either party to the tenth day of January next. It is ordered by the court that this cause be, and hereby is, set down for hearing on the third Monday of January
102 next. And afterwards, to wit, on the 18th day of December, came the complainants, by their solicitor, and filed their replication to the answer of E. Mariner, as follows:

*Replication.*

U. S. District Court, district of Wisconsin.

The replication of James T. Soutter and Greene C. Bronson to the separate answer of Ephraim Mariner, one of the defendants, to the bill of complaint of the above complainant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true—all which matters and things these repliants are, and will be, ready to aver and prove

as the honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

THOMAS L. OGDEN,
*Sol. for Comp'ts.*

*December* 21, 1860.—Receiver's report for month of November, 1860, filed.

*Rule for commission.*

*December* 27, 1860.—This day came the defendant, the Milwaukee & Minnesota Railroad Company, by its solicitors, and entered in the order and rule book a rule for a commission to issue to Winfield Smith, esq., of the city of Milwaukee, Wisconsin, to take the deposition of Byron Kilbourn, Moses Kneeland, Jackson Hadley, D. W. Keyes, and Prentiss Dow, and also filed interrogatories to be annexed to said commission.

*January* 4, 1861.—This day came the complainants, by their solicitor, and filed exceptions to the interrogatories to be annexed to said commission.

*January* 7, 1861.—This day came the complainants, by their solicitor, and filed cross interrogatories to be annexed to said commission.

*Time extended to take testimony.*

*January* 9, 1861.—This day came the defendant, the Milwaukee & Minnesota Railroad Company, through A. Fleming, and on motion of their counsel, and affidavit filed, it is ordered by the court that the time for taking testimony be, and hereby is, extended to both parties until the first day of February next; and that this cause be, and hereby is, set down for hearing on the first Monday of February next.

*January* 10, 1081.—Commission issued to Winfield Smith, esq , of the city of Milwaukee, to take the deposition of Byron Kil-
103 bourn, Moses Kneeland, Jackson Hadley, D. W. Keyes, and Prentiss Dow.

*January* 18, 1861.—This day came the defendant, Selah Chamberlain, by his solicitors, and filed copies of exhibits, with a stipulation annexed, that the same be treated as proven on the part of said defendant, and read in evidence at the hearing the same as the originals might be were they produced. And same day copy of deed on the part of the Milwaukee, Watertown & Baraboo Valley Railr. ad Company, with a like stipulation annexed, filed.

*January* 22, 1861.—Receiver's report for month of December, 1860, filed.

*January* 26, 1861.—Depositions received from post office and filed.

*February* 2, 1861.—Depositions received from Winfield Smith, esq., and filed.

And afterwards, to wit, on the 4th day of February, 1861, came the defendant, Selah Chamberlain, by his counsel, and by consent filed an amendment to his answer, and the same is considered as replied to, and not to cause delay, as follows:

*Amended answer of S. Chamberlain.*

District Court of the United States for the district of Wisconsin—In equity.

GREENE C. BRONSON and JAMES T. SOUTTER,
*vs.*
SELAH CHAMBERLAIN impl'd with The La Crosse & Milwaukee R. R'd Co. and others.

Amended and further answer of S. Chamberlain to the bill of complaint of Greene C. Bronson and others, pursuant to an order of court this day made herein.

And this defendant, further answering, says that the La Crosse & Milwaukee Railroad Company, on the 7th day of June, 1858, made a contract, bearing date on that day, with Jacob A. Hoover, for the purchase of lot four, in block thirty, in the sixth ward of the city of Milwaukee, for the sum of $4,000, one thousand of which was paid by said company, and the company failing to pay the remaining $3,000 and interest therein, said Hoover obtained an injunction against this defendant, in possession of the said road of said company and said lot, which was and still is used as part of the depot grounds of said railroad company in the city of Milwaukee; and this defendant, on or about the 18th day of February, 1859, was obliged to pay and did pay to said Hoover, in order to get said injunction dissolved, and procure the further use of said lot, the costs of said injunction suit, and the balance then due said Hoover on said contract, amounting in all to the sum of $3,236\frac{500}{100}$, and obtained from said Hoover and wife a warranty deed of said lot, conveying the same in fee simple to him, said Chamberlain, subject to the rights of said railroad company; and he
104 avers that he has on that lot the first lien for the moneys so paid and interest, and he asks that the sale prayed in the bill of complaint in this cause may be made subject to his lien for the sum so paid and interest, or that he may be first paid that sum out of the proceeds of sale; and he avers that the sum to be paid for said lot is in addition to the sums of money mentioned in his original answer in this cause as due him.

SELAH CHAMBERLAIN.

EMMONS, VAN DYKE & HAMILTON,
*Sol'rs and of Counsel.*

And afterwards, to wit, on the 7th day of February, 1861, came the defendant the Milwaukee & Minnesota Railroad Company, by its counsel, and by consent filed an amendment to its answer, and the same is considered as replied to, and not to cause delay, as follows:

*Amended answer of Mil. & Minn. R. R. Company.*

In District Court of the United States for the district of Wisconsin—
In equity.

GREEN C. BRONSON *et al.*,
*vs.*
The La Crosse & Milwaukee Railroad Company, *et als.*, defendants.
} Foreclosure suit.

The said Milwaukee & Minnesota Railroad Company, one of the defendants in the above entitled cause, amends its answer as follows: "And this defendant, further answering, on information and belief, says that the said complainants, by Prentiss Dow, their agent, have been in possession of the said railroad property and franchises in the said mortgage or trust deed to said complainants described some time since the commencement of this suit, and until the appointment of a receiver of the same by this court, and during such possession the said complainants, by their said agents, received of the rents, revenues, receipts, and tolls of said railroad, the sum of eighty-six thousand dollars, which remains unaccounted for and unapplied on the claim for which said complainants prosecute this foreclosure suit; and this defendant further, on information and belief, says that the said mortgage or trust deed given to said complainants was made, executed and delivered by said La Crosse and Milwaukee Railroad Company to said complainants, and the bonds thereby secured were made, executed and delivered, and sold as in said bill of complaint mentioned, with intent to thereby hinder, delay and defraud the creditors of said company; and that said complainants, when they accepted said mortgage or deed of trust, and the holders or purchasers of said bonds, when they purchased or became the holders thereof, respectively, all and each and every of them had full notice and absolute and actual knowledge of the said intent of said La Crosse and Milwaukee Railroad Company, as hereinbefore stated; and that said deed of trust or mortgage and
105 said bonds are as against this defendant, a creditor of said La Crosse & Milwaukee Railroad Company, absolutely null and void. All the foregoing amendment is made and set up by this defendant on advice, information, and belief.

MILWAUKEE & MINNESOTA RAILROAD COMPANY.
By A. FLEMING, *Stockholder.*

DISTRICT OF WISCONSIN, *ss:*

A. Fleming, being first duly sworn on oath, says that he has heard read the foregoing amendment to the answer of the Milwaukee & Minnesota Railroad Company, and knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me, this 6th day of February, 1861.
J. M. MILLER. *Clerk, &c.*

We stipulate that the replication already filed shall apply to this amendment to the answer of the Milwaukee & Minnesota Railroad Company, and that all proofs taken shall apply, and the same as if it had been in the original answer.

Dated Feb'y 7, 1861.

MAT. H. CARPENTER,
For said *Mil. & M. R. R. Co.*

And same day (February 7, 1861) came the parties, by their counsel, and this cause came on to be heard upon the pleadings and proofs; and, not being concluded, the further hearing was adjourned until to-morrow, at two o'clock in the afternoon.

*February* 8, 1861.—This day came the defendant Ephraim Mariner, and filed his consent, in writing, that the decree in this case for the complainants may be made without prejudice to the interest in the said mortgaged premises claimed by him in his answer, except as to his right as a judgment creditor. And came the parties, by their counsel, and the hearing of this cause was resumed; and, not being concluded, the same was adjourned until to-morrow morning, and same day depositions received from David L. Deyo, esq., and filed.

*February* 9, 1861.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and, not being concluded, the same was adjourned until Monday morning next, and same day depositions received from David L. Deyo, esq., and filed.

*February* 11, 1861.—This day came the parties, by their counsel, and the hearing of this cause was resumed; and, being concluded, the court took time to consider.

106 *Complainants' testimony.*

Complainants' testimony admited and read at the hearing.

*Mortgage.*

Deed of trust made this seventeenth day of August, in the year of our Lord eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees, as hereinafter mentioned, parties of the second part.

Whereas said railroad company, for the purpose of constructing its roads, has determined to borrow a sum of money not exceeding one million of dollars, and to issue not exceeding one thousand of its bonds for the repayment of the sums which may be borrowed, with interest thereon, which bonds will be numbered, respectively, from one to one thousand, both inclusive, and will be, substantially, in the following form, to wit:

"UNITED STATES OF AMERICA,
No. —. *State of Wisconsin.* $1,000.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to the

bearer hereof in the sum of one thousand dollars, for money borrowed for the construction of their roads, which sum they agree to pay to the bearer hereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York semi-annually on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. The holder of this bond may, at any time within five years from the date hereof, convert the same into the capital stock of the company, estimating both the bond and the stock at par, on surrendering the bond with the unpaid coupons.

This is one of one thousand bonds, all of the same tenor, and numbered from 1 to 1,000, respectively, making in all one million of dollars; for securing the payment of which a trust deed has been executed by said company to Greene C. Bronson and James T. Soutter, of the city and State of New York, conveying to them (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also conveying to them the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one half of which last mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation; together with the equipments and all other things
107 pertaining, or which may hereafter pertain to the roads so conveyed, or either of them; reference to which deed is hereby had and made for a more full description of its contents.

In witness whereof said railroad company has hereto affixed
[SEAL.] its corporate seal, and caused the same to be signed by its president and secretary this first day of September in the year of our Lord 1857.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this ——— day of ———, 185 .

——— ———, } *Trustees.*
——— ———, }

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided.

Now, therefore, this deed witnesseth that said railroad company, in consideration of the premises, and the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part, all and singular the railroad of said company commencing in the city of

Milwaukee, and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one half of which last mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces or parcels of land which now are, or may hereafter be or constitute the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, or either of them; and also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made, or to be built and made hereafter; and also all and singular the locomotive engines, and other rolling stock, and all the other equipments of every kind and description which have already been, or may hereafter be, procured for or used in said railroads or either of them, and all the materials, tools, implements, and utensils, and other personal
108 property, which have been, or may hereafter be, procured for or used in connexion with said railroads or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, aforesaid. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped. Said railroad from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to a second mortgage of one hundred and fourteen thousand dollars, and the next forty miles of said road westward of the eighteen miles is subject to a second mortgage of two hundred thousand dollars.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the said parties of the second part, and the survivor and successor of them, and their and his heirs and assigns forever, as joint tenants and not

as tenants in common, in trust, nevertheless, and upon the usts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants, or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustees are hereby authorized in their discretion, either in person, or by their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads, and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroads and
109 other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company of, in or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction notice of such intended sale shall be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case the interest in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustees, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, shall proceed to make such sales and conveyances as are above mentioned.

Third. Said railroad company covenants and agrees to and with said trustees, and the survivor and successor of them, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire of, in or to all and every part of the property

hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this deed to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens, which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed; and the trustees assume no duty or responsibility on those subjects, or any of them, nor in relation to any other matter or thing, except as is herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustees; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months, after the principal moneys shall fall due as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their right, title, and interest of, in and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses and compensation of the trustees in, about, or for the execution of the trust, and will in all things keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they may sustain or be put to in consequence of accepting the trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustees.

Seventh. The trustees are hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection; nor shall the trustees be responsible for anything short of gross negligence or wilful default in the discharge of any of their duties; nor shall either of the trustees be answerable for the acts, omissions, or defaults of his associate.

Eighth. All moneys which may be received by the trustees under the trust, after deducting therefrom all costs, counsel fees, charges and other expenses of the trustees, and their compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Ninth. The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associate, or of the railroad company, reasonable notice being first given to said trustee. Either of the trustees may resign his trust, and be thenceforward discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustee, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court, on reasonable notice to

the other trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all right, title, interest and authority under the trust, and be subject to all duties and responsibilities under the same as fully as though he had been the original trustee and had executed this deed.

Tenth. Said trustees hereby accept, and covenant and agree to and with said railroad company faithfully to execute, said trust.

In witness whereof said railroad company has hereto affixed its { L. C. & MIL. R. R. CO. SEAL. } corporate seal, and caused the same to be subscribed by its president and secretary, and the trustees have subscribed their names and affixed their seals the day and year first above written.

BYRON KILBOURN, *President* } *of the railroad*
JACKSON HADLEY, *Secretary* } *company.*

Witnesses to the execution by—
BYRON KILBOURNE and
JACKSON HADLEY.
W. C. FORD.
H. L. RICHARDS.

GREEN C. BRONSON, [SEAL.] } *Trustees.*
JAMES T. SOUTTER, [SEAL.] }

111 Witnesses to execution by Green C. Bronson and James T. Soutter—
R. H. LOWRY,
H. W. FORD.

STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered that on this seventeenth day of August, one thousand eight hundred and fifty-seven, before me, the undersigned, Wm. Cleveland Ford, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the acknowledgement of deeds c., to be used or recorded therein, personally appeared Byron Kilbourn, Jackson Hadley, Greene C. Bronson, and James T. Soutter, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof, by them sealed and subscribed, to be their free act and deed for the uses and purposes therein mentioned.

[SEAL.] In witness whereof I have set my hand and affixed my official seal the day and year aforesaid.

WM. CLEVELAND FORD,
*Commissioner for Wisconsin in New York.*

STATE OF NEW YORK
*City and County of New York, ss:*

On this fifteenth day of September, 1857, before me, the undersigned, Gordon L. Ford, a commissioner in and for the State of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the acknow-

ledgements and proof of deeds to be used or recorded therein, personally appeared Byron Kilbourn, president of the La Crosse and Milwaukee Railroad Company, to me well known as the person who by that name subscribed the foregoing deed, and being by me duly sworn, did acknowledge, depose, and say, that the seal affixed to said deed is the seal of said railroad company, and was affixed to said deed by the order and direction of the board of directors of said company, and that the said Kilbourn at the date of said deed was, and ever since has been, the president of said company, and Jackson Hadley at the date of said deed, was, and ever since has been, the secretary of said company; and that said deed was subscribed by him as the president and by said Hadley as the secretary of said company, and that both of them so subscribed said deed by the order and direction of said board of directors; and that said deed is the act and deed of, and was executed by, said railroad company for the uses and purposes therein mentioned. All which proof and acknowledgement is to me satisfactory.

[SEAL.] Given under my hand and official seal the 15th of September, 1857.

GORDON L. FORD,
*Commissioner for the State of Wisconsin and for the State of New York.*

112

SECRETARY'S OFFICE,
*Madison, Aug. 21st*, 1857.

Rec'd for record and recorded in book of railroad mortgages, on pages 234, 235, 236, 237, 238, 239, received at 5 o'clock p. m.

D. W. JONES,
*Secretary of State.*

STATE OF WISCONSIN,
*Secretary's Office.*

Rec'd for record and recorded in book of railroad mortgages, on pages 245, 246, 247, 248, 249, 250, at 5.30 p. m., Sept. 18th, 1857.

D. W. JONES,
*Secretary of State.*

*Deposition of Dow.*

United States District, District of Wisconsin.

JAMES T. SOUTTER and GREENE C. BRONSON,
*against*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Depositions of Prentiss Dowe and Edwin H. Goodrich, witnesses produced and examined on the part of the complainants, who, being by me duly sworn, testified as follows:

Prentiss Dowe a witness produced, sworn, and examined on the part and behalf of the complainants in the above entitled cause, testifies as follows:

I am fifty-six years of age; I reside in New Jersey. In February, 1860, was in St. Paul, Minnesota. I was not in Milwaukee at any time in the month of February, 1860. I think I left Milwaukee for Minne-

sota about the last day of January, or the first day of February, 1860; I think I returned to Milwaukee about the last day of February, or the first two days of March. I was not here between the first and last days of February, 1860.

Quest. Were you present this morning at the examination of Messrs Brodhead, Catlin, and Jervis?

Ans. I was.

Quest. Did you, in February, 1860, or at any other time, say to them, or either of them, that it was not for your interest to have large receipts on the La Crosse and Milwaukee Railroad, or words to that effect?

Ans. I did not. The only remark tending or looking to any such, in form or substance, was in some conversation—I can't tell with whom—to the effect that I had no desire to make large showings of the earnings of the road not founded upon actual net earnings, and we had had enough at the east of humbug reports.

Quest. Were you cognizance of a negotiation going on between Mr. Chamberlain and the Mississippi road respecting the working and operations of the two roads.

113 Ans. I was present at several interviews between the parties representing the two roads, having for their objects to divide and regulate business between them.

Quest. Was such a contract concluded, and when?

Ans. It was concluded on the 20th day of December, 1859.

Quest. How are you able to fix that date?

Ans. By reference to the contract itself, now in my hand.

Quest. Can you state the comparative expense and receipts during the first five months of 1860, and the corresponding period of the year 1859?

(Objected to by def'ts as immaterial.)

Ans. The receipts for the first five months of 1860 were over $41,000 more than the receipts of the first five months of 1859, and the expenditures for operating expenses were more than $14,000 less than 1859, during the same period.

Quest. Have you an abstract of the receipts and expenditure from the first of December, 1859, to May 18th, 1860? If so, produce the same, and state who made it, and from what it was made up, and whether this statement produced by you is a true and correct abstract of the receipts and disbursements during that period, as shown by the books of Chamberlain.

Ans. I have an abstract marked exhibit "A," made by Mr. Keyes and myself, from the cash book of daily receipts and disbursements during that period, and introduce a copy of the same, marked "A." I also have a like abstract of the receipts and disbursements of the road from the 19th of May, 1860, to the 9th of June, 1860, inclusive, marked "B," made by Mr. Keyes and myself from the book of daily receipts and expenditures. These papers produced are true and correct abstracts from the books, to the best of my knowledge and belief.

Quest. Who was in possession and running the La Crosse railroad from December, 1859, to May 18, 1860?

Ans Sela Chamberlain was in possession and running the road.

Quest. Were you ever financial agent of La Crosse and Milwaukee Railroad Company?

Ans. I never held any such appointment.

Quest. What office did you hold under the company?

Ans. That of transfer agent in the city of New York.

Quest. When did you enter upon that office, when were you appointed, and how long did you continue?

Ans. I entered upon the office some time in July, 1857, and was removed by the company about the 1st to 8th of October, 1857.

Quest. Did you ever hold any other, and if so, what, office or appointment under that company?

Ans. Some time in the month of November, 1857, I was informed by the president of the company, Stephen Clark, that I had been appointed agent for the settlement of some claims, or something of that kind, but had no written appointment. About the last week
114 in November, 1857, I was requested by the president to come to Milwaukee with him and examine into the affairs of the Milwaukee and La Crosse Company, which I did. Towards the last of December, 1857, I was informed by the president that I had been appointed agent by the company for the purpose of looking into, inforcing, or compromising certain claims in this State, but had no written appointment.

Quest. Did you have, while in New York, the key of the safe in which a large amount of the bonds were contained?

Ans. I had one of two keys of the safe, both of which opened the safe containing the bonds of the company.

Quest. Have you read or heard read the testimony of Moses Kneeland and Byron Kilbourn respecting your retaining, abstracting, or sequestrating any of the bonds of the company?

Ans. I have.

Quest. State, if you please, all of the circumstances relating to the transaction aluded to in that testimony.

Ans. The last of September, 1857, I was informed that an attachment had or was about to issue against the La Crosse and Milwaukee Company for debt. I consulted the counsel of the company in New York, Francis B. Cutting and Edward Pierpoint, as to what I had better do with the large amount of bonds which were then in the safe, and whether the bonds were the subject of attachment like personal property. They advised me that it would be best for the company to remove the bonds to some safe place of deposite out of the office. I did so, placing them in the trunks in the vaults of Atwood & Co., and the Bank of the Republic. About the first week in October, 1857, Mr. Kilbourn came to New York from Milwaukee with a number of the western directors of the company. A meeting of the board of directors was held at the Lafarge house, in New York, at which I was invited to be present and render a statement of the bonds in New York belonging to the company. I presented the statement at that meeting, as requested. Demand was made by the company on me to deliver the bonds to Jackson Hadley, the secretary of the company, by written resolutions, which were handed to me. I declined, and gave my reasons, which were that one of their own board then present had re-

cently informed me that Hadley had taken from the safe in the office in New York, $200,000 of the bonds of the company; under the pretense of borrowing money on the same at Hartford, Connecticut, when in reality Hadley intended to use them to get up his guarantee given upon the sale by him of $200,000 of corruption bonds. I gave, for further reason, that the stockholders and bondholders of the company in New York and vicinity, at the facts disclosed by Mr. Kilbourn, the president, as having transpired in the city of Milwaukee, had become very much excited. He had represented in the month of September, before his then recent visit to Milwaukee, that not more than
115 $ 00,000 or $400,000 was required to pay what was due the contractor and complete the road to Tomah, whereas he had made known since his return from Milwaukee that the company had confessed a judgment in favor of the contractor for $629,000, and had given a lease of the road for an indefinite period to the contractor to secure the payment of the above debt, and the road was completed only about two-thirds of the distance between Portage and Tomah, the junction. I stated further, as reasons, that if I were to surrender the bonds the excited stock and bond holders would put Mr. Kilbourn and some who were with him in the Toombs. Efforts were made by Mr. Kilbourn for some days afterwards, by various promises and threats, to induce me to hand over the bonds. About the 17th of October, 1857, an injunction was issued out of the supreme court of the State of New York, at the suit of Vose, Livingston & Co., restraining the company from demanding, and myself from delivering, the bonds After what was called the eastern board had been organized, early in November, 1857, I prepared a resolution to be adopted by the board placing the custody of all the funds and bonds of the company in the hands of the new president. About the 9th day of November, 1857, at my request, a committee was appointed by the board to examine the accounts of the office in New York, and the details of the bonds on hand, with a view of carrying out the resolution of placing the bonds in the custody of the president. Some time during the month of November, 1857, the examination was made, the securities and cash examined, and all the bonds, securities, and funds placed in the hands of the president. The committee were the president and Alfred Noxon. About $500,000 of the bonds above spoken of were land grant bonds. I think 2d mortgage bonds, about $40,000, and farm mortgage bonds, about $7,000, together with some notes, about which I don't recollect the details.

Quest. Had you been requested, previous to the time of the demand of the company upon you for the bonds by the bond or stock holders, to retain under your control and possession the bonds referred to, and not deliver them up; and if so, by whom?

Ans. I was so requested, and remember among the number Mr. John Nicholson, of England, Mr. Vose, Mr. Voorhes, and many who were strangers, whose names I never knew. The office was a perfect burse of excited stock and bond holders as soon as the news was received of Chamberlain's lease and judgment

*Cross-examination.*

Question. When did you commence taking the receipts of the railroad, as mentioned?

Ans. The first day of December, 1859.

Quest. In what capacity did you receive them?

Ans. As attorney in fact of the complainants in the suit.

116 Quest. Did you receive all the earnings and income of the road; and if so, during what time?

Ans. They were paid to me as agent of the trustees by Mr. Chamberlain from the first day of December, 1859, to the 18th day of May, 1860, and from the 19th day of May, 1860, to the 9th day of June, 1860, inclusive. They were paid to me as the agent and attorney in fact of the trustees by the opperators and officers of the trustees.

Quest. Did anybody, and if so, who, direct or control the disbursements of the moneys you so received?

Ans. The disbursements were made upon the warrants or orders of Edwin H. Goodrich, Mr. Chamberlain's manager, who was the director of the disbursements generally during the period first mentioned. During the second period mentioned Mr. Goodrich was manager for the trustees, and the disbursements in like manner were made, so far as the operations of the road was concerned, by like warrants or orders, subject to my own supervision as to the items and general scrutiny of the same.

Quest. Has there been an attorney associated with you, acting for the trustees?

Ans. There has been. Francis A. Palmer, of the city of New York, who was associated with me as attorney in fact in the power of attorney from the trustees.

Quest. Did you and Mr. Palmer, as such attorneys, at any time enter into a written contract with Sela Chamberlain in respect to your receiving the funds of the road, and in respect to the sale of the road under any decree to be made in the present foreclosure suit, or in respect to the organization of the new company after such sale and the distribution of the stock?

(Objected to as immaterial and not pertinent to issues made by the pleadings.)

Ans. There was a written agreement entered into by Mr. Palmer and myself, as attorneys for the trustees, and Mr. Chamberlain, in possession of the road, having reference to the receipts and disbursements, and having reference also to the terms of the decree we should ask in this suit; but having no reference to the formation or organization of any company for the purchase of the road or the issuing of any stock representing the purchase of the road or any ownership after the sale.

Quest. Have you the said contract or a copy thereof, and will you furnish a copy to the defendants, or permit them to take a copy to be annexed to this deposition?

Ans. I have the original under my control. There is a copy attached to my affidavit on file in the court, and if that cannot be used

I will allow them to take a copy. This contract was entered into about the first day of December, 1859.

Quest. Have you, as such attorney, made any other or further or new contract with said Chamberlain in relation to the decree
117 in this case, the sale under it, or the formation of the company after the sale under it.

(Objected to for the same reason as before.)

Ans. I have not, neither has Mr. Palmer to my knowledge.

Quest. Did you, as such attorney or otherwise, take part in the negotiations between the Mil. and Miss. Railroad Co. and Sela Chamberlain or his agents, in reference to the matters embraced in the contract of 20th December, 1859, mentioned in your direct testimony?

Ans. Not as attorney of the trustees, but I did as the general representative of the bondholders.

Quest. With what officer or agent of the Mississippi Co. did you have conversations?

Ans. With Catlin, Brodhead, Jervis; I think Mr. Lawler, the Prairie du Chien agent; I think Mr. Crocker, then a director; I think Col. Walker, and I not sure but I think Col. Dousman, of Prairie du Chien.

Quest. Were you present, at any time, at an interview at the Newhall House, in Milwauwkee, when Messrs. Catlin, Jervis, and Brodhead were present with you?

Ans. I was.

Quest. Was that interview before or after the terms of the contract was agreed upon?

Ans. Before.

Quest. Did the parties present come to any agreement at that interview?

Ans. We had more than one interview at the Newhall House when those three gentlemen were present

Quest. How long was Mr. Noxon a director of that company?

Ans. He was first elected about the last of October, 1857, and, according to the best of my recollecting, remained a director until May, 1859.

Quest. Was your son employed in any capacity in the New York office; and if so, in what capacity?

Ans. He was employed in keeping the books and in sundry other duties.

Quest. Did he act under your direction?

(Objected to as immaterial.)

Ans. He acted under my direction, but not under my direction alone; he acted under Mr. Richard's directions, a clerk in the office, and Mr. Kilbourn's when he was there.

Quest. Was there a book kept by your son containing entries of the disposition made of the 2d mortgage bonds, the persons to whom they were disposed of, and the money or things received for them?

Ans. There was no one book that contained that account; there were four books in which the account was embraced, one book was called a bond register, which showed the numbers of the bonds and the name of the parties to whom delivered; the next was a cash book

in which was entered the cash received from these bonds and
118 all other sources of receipts in the office; the 3d book a journal, embracing the daily transaction of stock bonds and anything in the shape of transactions in the office; and lastly, a ledger, into which the transactions were posted or summed up.

Quest. At what time did you come into possession of the second mortgage bonds referred to in your previous testimony for the defence?

Ans. Two bonds the latter part of September, eleven the latter part of October, 1857. It was before the new board came in.

Quest. Have you seen the statement of your account in connection with these bonds annexed to the testimony of Mr. Stanton?

Ans. I have not, to examine it.

Quest. Did you ever see a statement of your account in connection with those bonds in any book of the co.; and if so, what book?

Ans. I have seen, I have no doubt, my account in the ledger in New York embracing those bonds.

PRENTIS DOW.

*Exhibit A, referred to in the deposition of Prentis Dow hereto annexed.*—D. L. DEYO.

*Receipts and disbursements of S. Chamberlain through the trustees of the 2nd mortgage under the agreement with him, from Dec'r 1, 1859, to May 18, 1860.*

RECEIPTS.

| | |
|---|---|
| From freight income | $199,811 46 |
| passengers do | 63,046 85 |
| foreign tickets sold | 61,551 88 |
| express | 4,886 65 |
| mails | 5,917 15 |
| miscellaneous acc'ts | 34,057 93 |
| | 369,305 92 |

DISBURSEMENTS.

| | |
|---|---|
| For operating expenses | $161,687 32 |
| foreign balances | 54,085 89 |
| back charges | 53,075 59 |
| incumbrances on real estate—depot grounds | 15,792 04 |
| right of way | 3,085 91 |
| depot buildings | 2,059 14 |
| bridge construction | 3,275 85 |
| rolling stock | 14,195 71 |
| trustee 1st mortgage for int. 1st mortgage | 38,513 26 |
| State taxes | 4,924 54 |
| miscellaneous acc'ts | 7,671 02 |
| paid trustees 2d mort | 10,939 65 |
| | 369,305 92 |

*Exhibit "B," referred to in the deposition of Prentis Dow, to which this is annexed.*—D. L. DEYO.

*Receipts and disbursements of the La Crosse and Milwaukee railroad, as operated by Bronson & Soutter, trustees.*

| 1860. | | | | 1860. | | | |
|---|---|---|---|---|---|---|---|
| May 19 to June 9. | Bal. from disb., S. Chamberlain, mortgagee | $10,939 65 | | May 19 to June 9. | By amt. disbursements, viz: | | |
| | From freight income | 38,881 82 | | | Operating expenses | $35,617 53 | |
| | From passenger income | 10,491 00 | | | Foreign balances | 1,656 80 | |
| | From foreign tickets | 16,338 83 | | | Back charges | 3,000 00 | |
| | From express | 438 17 | | | Incumbrances on real estate | 1,031 69 | |
| | From mail | 605 52 | | | Right of way, W. D. | 98 66 | |
| | From telegraph | 24 19 | | | Miscellaneous | 388 84 | |
| | From tolls | 65 80 | | | License for 1860, (State) | 6,654 93 | |
| | From miscellaneous | 1,610 11 | | | Foreclosure expenses | 8,073 13 | |
| | | | $79,394 89 | | Balance | 22,873 31 | |
| | | | | | | | $79,394 89 |
| | To balance brought forward | | 22,873 31 | | | | |

*Deposition of Goodrich.*

Edwin H. Goodrich, a witness produced, sworn, and examined in the above entitled cause, testifies as follows:

I am about forty years of age; I reside in Milwaukee, and am manager of the La Crosse and Milwaukee railroad and have been such manager since October, 1856.

Quest. Do you know about what time negotiations were opened between Mr. Chamberlain and the Milwaukee and Mississippi road for regulating the running of the roads and the division of the business and the joint operations, and when was such arrangements concluded?

Ans. The negotiations which ended in the execution of the contract was opened in December, 1859, and concluded about the 20th day of the same month; no other contract was made between them to my knowledge.

Quest. Did Mr. Dow take any and what part in such negotiations, and did he favor or oppose such contract?

Ans. He did take part in the negotiations and favored the execution of the contract.

*Cross-examination.*

Quest. Do you know, of your own knowledge, what interviews he had with the officers of the Mississippi company, or what statements he made to them?

Ans. I know that he had one interview with them; I was present. I don't know of his having other interviews than the one at which I was present.

Quest. Where was that interview and who was present?

120 Ans. The meeting was at the Mil. & Mississippi Railroad Co's office, Mr. Catlin, Mr. Brodhead, Mr. Jervis, Mr. Chamberlain, Mr. Dow, and myself were present.

*Direct resumed.*

Quest. At that time, or at any other time, to your knowledge, did Mr. Dow, in your presence, make any statement to the effect that it was not for his, their, or to the interest of the 2d mortgage bondholders or trustees that there should not be, or appear to be, large earnings or business on the La Crosse and Milwaukee Railroad?

Ans. He did not to any person make such statement in my presence.

EDWIN H. GOODRICH.

*Certificate.*

DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing deposition was taken before me by consent of the counsel for the parties, on the 8th day of February, A. D. 1861, at my office in the city of Milwaukee, in said district, Mr. Francis Randall, of counsel for the complainants, appearing for the

complainants, and Mr. Levi Hubbell, of counsel for the defendants, appearing in their behalf; that said witnesses were first duly sworn by me, as commissioner in and for said district court, to tell the truth, the whole truth, and nothing but the truth, as far as he should be interrogated in said cause; that his depositions so taken on oath was reduced to writing by me, and after being first carefully read over to said witnesses were by them subscribed in my presence.

Dated this 9th day of February, 1861.

Fees, $8 45.

D. L. DEYO,
*U. S. Comm'r, Dist. of Wis.*

*3rd mortgage bond.*

No. 544—$100.

United States of America, State of Wisconsin.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company—

For value received, acknowledges itself indebted to the bearer hereof in the sum of one hundred dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation and delivery of the interest warrants or coupons hereto annexed.

This is one of a series of bonds, all of the same tenor, (except as to amount,) making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwau-
121 kee and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents.

And for further securing and providing for the payment of said bonds the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be signed by its president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

{ LA CROSSE & MILL. R. R. CO. SEAL. }

N. P. STANTON, *President.*
LOCKWOOD S. DOTY, *Secretary.*

Registered and countersigned this tenth day of December, 1858.
WILLIAM BARNES, *Trustee.*

Here follow 60 coupons, numbered from 1 to 60, inclusive, for the sum of three dollars and fifty cents each, payable at the Albany Exchange Bank semi-annually.

Endorsed on the back of said bond is as follows:

No. —. State of Wisconsin. $100.

La Crosse & Milwaukee R. R. Co.
Third Mortgage Sinking Fund Bond.
Seven per cent. interest.

Payable at the Albany Exchange Bank, in the city of Albany, January 1st and July 1st.

Redeemable at the Albany Exchange Bank, in the city of Albany, July 1st, 1888.

Whole issue of bonds, $2,000,000.

Secured by a mortgage on the whole line of road from the city of Milwaukee to the city of La Crosse, on the Mississippi, it being about 200 miles.

| | |
|---|---|
| Subject to a mortgage of $922,000 on the line of road between Milwaukee and Portage | $922,000 |
| Also, of a 2d mortgage on the same line of $1,000,000 | 1,000,000 |
| Also, of $314,000 due the city of Milwaukee | 314,000 |
| Also, of 1st land grant mortgage of $4,000,000 on line of road from Portage City to La Crosse | 4,000,000 |
| Also, of 2d land grant, of about $200,000, from Portage City to Tomah | 200,000 |
| | 6,436,000 |
| New issue of 3d mortgage sinking fund | 2,000,000 |
| 122 Entire bonded debt of company, secured by mortgage on road and lands | 8,436,000 |
| By a careful estimate the directors value the lands that they are entitled to, for the construction of the road between Portage City and La Crosse at | 3,000,000 |
| Which will reduce the above debt and leave the entire road, from Milwaukee to La Crosse, with a mortgage debt of | 5,436,000 |

*Resolutions from minute book of Co.*

(Page 216.)—Special meeting of the board of directors of the La Crosse & Milwaukee R. R. Co., held Monday evening, July 13th, 1857, at which were present Messrs. Brown, Hadley, Goodrich, Kneeland, Palmer, Vliet, and Kilbourn, pres't.

*Resolved*, That William Dawes be, and is hereby, appointed general agent of this company, to reside in the city of New York, subject to such instructions as shall be given, from time to time, by this board or the president of the company, and generally to perform such duties as pertain to that office.

(Page 235.)—Meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, Sept. 2d, 1857, at the office of the company, in the city of Milwaukee, at which there were present Messrs. S. Brown, E. H. Goodrich, J. Hadley, Chas. E. Jenkins, M. Kneeland, H. McFarlane, H. L. Palmer, M. M. Strong, G. Vliet, and B. Kilbourn, president.

*Resolved*, That in the event of this company effecting a sufficient loan to meet the liabilities of the company and provide for its expenditures in the construction of its road, as contracted for with S. Chamberlain, it will take of Greene C. Bronson, in consideration of sundry services rendered this company by him, for which no compensation has been heretofore made, one hundred and fifty shares of stock, heretofore purchased by him, at its original cost to said Bronson.

(Page 387.)—Pursuant to adjournment of a meeting held at the Delavan House, in the city of Albany, 5th instant, the board of directors of the La Crosse & Milwaukee Railroad Company met at the Lafarge House, in the city of New York, November 9, 1857, at 7 o'c'k p. m. Present: J. R. Brewster, Artemus Fish, A. Noxon, Eli Perry, Dr. N. Radcliff, D. E. Wheeler, and Stephen Clark, president.

Whereas, one hundred and seven thousand dollars of the unsecured bonds of this company, heretofore issued for a valuable consideration, called convertable 7 per cent. bonds of 1861, are now outstanding in the hands of holders, who should be protected, therefore—

*Resolved*, That one hundred and seven thousand dollars of the land grant bonds of this company be reserved and used, at the discretion of the president, for the final payment of the above-named one hundred and seven thousand dollars of convertible bonds issued the —— day of ———, 1856, and that the said land grant bonds, at the
123 discretion of the president, be placed in the Bank of the Republic, in the city of New York, as trustee, with authority to exchange the same for said convertible bonds when presented in proper sums.

(Page 320.)—January 30, (1858,) St. Nicholas Hotel, board met pursuant to adjournment. Present: Stephen Clark, president; and Messrs. Kneeland, Perry, Radcliff, Brewster, Fish, Wheeler, and Noxon.

*Resolved*, That the president be, and he is hereby, authorised and directed to pay and deliver to S. R. Foster forty land grant bonds,

according to a resolution of the executive committee passed November 11, 1857.

(Page 356.)—At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company in the city of Milwaukee, commencing at 3 o'clock p. m. on Monday, the 24th day of May, 1858, there were *present* N. P. Stanton, president; Mr. Foster, Gunnison, Kneeland, Luther, Noxon, Perry, Palmer, and Shear. It was moved and seconded that the proceedings of the board at the meetings of November 18th, 1857, and January 28th, 1858, relating to settlements with S. R. Foster, Alfred Noxon, and S. H. Alden now be read. The same having been read, the following resolution was submitted by Mr. Luther, and, on motion, the same was unanimously adopted:

*Resolved*, That the proceedings of two meetings of the board held at the Delavan House in Albany, on the 18th day of November, 1857, and the proceedings of a meeting of the board held on the 28th day of January, 1858, at the St. Nicholas Hotel, in New York, be, and the same are hereby, approved and confirmed.

*Receipt of Guest.*

OFFICE LA CROSSE & MILWAUKEE R. R. Co.,
*New York*, 14 *Septem'r*, 1858.

Received from James T. Soutter fifty-five thousand dollars in bonds of this Co., viz: $37,000 7 per cent. convertibles; 18,000 8 per cent. farm mortgages, both with full coupons from 1 Jan'y last, inclusive, which bonds are received in full payment of a similar amt. ($55,000) of the 8 per cent. 2d mortg. bonds of this company, (of the $1,000,000 issue,) and which it was heretofore agreed he should have in exchange, and which were, some time ago, delivered to him, but the bonds to be given up by him were not rec'd until this day.

WM. A. GUEST,
*Chairman and Vice-President.*

Execution admitted by Guest, and that he was officers as purporting.

M. H. CARPENTER,
*For M. & M. Co.*

124 *Defendant's testimony.*

Defendant's testimony admitted and read at the hearing. Commission, rules, interrogatories, &c., issued to Winfield Smith, esq., to take testimony.

*Commission.*

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

[SEAL OF COURT.] The President of the United States of America to Winfield Smith, esq., of the city of Milwaukee, greeting: Know ye, that in confidence of your prudence and fidelity,

you have been appointed and by these presents you, or any one or more of you, are invested with full power and authority to examine Byron Kilbourn, Moses Kneeland, Jackson Hadley, D. W. Keyes and Prentiss Dow, on their corporal oaths, as witnesses in a cause depending the district court of the United States for the district of Wisconsin, wherein Greene C. Bronson and James T. Soutter, trustees, are complt's and the La Crosse & Milwaukee Railroad Company *et al.* are defendants on the part of the defendant Mil. & Minn. R. R. Co.,
125 upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Byron Kilbourn, Moses Kneeland, Jackson Hadley, D. W. Keyes, and Prentiss Dow, to come before you, and then and there examine them on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said district court of the United States before the judge thereof, with all convenient speed.

Witness the honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin aforesaid, at the city of Milwaukee in said district, this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

J. M. MILLER, *Clerk.*

*Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioness are absent at the execution of said commission, any one, or more present, may proceed to execute the same, (unless otherwise expressly directed therein,) as if ll were present: but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

*First.*—They, or any of them, shall publicly administer an oath to the witnesses named in the commission that the answers given by such witnesses, to the interrogatories proposed to them, shall be the truth, the whole truth, and nothing but the truth.

*Second.*—They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

*Third.*—If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not sub-

ject to the control of the party, or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

*Fourth.*—The commissioner, or commissioners, shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the *clerk* of the court from which the commission issued, at his place of residence, with the style of the suit.

*Fifth.*—If there is or is not a direction on the commission to return the same by mail, they, or he, shall immediately deposit the packet so directed in the nearest post office.

*Sixth.*—If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

In District Court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON *et al.*, complt's,
*vs.*
The La Crossse and Milwaukee Railroad Company and others, defendants.

DISTRICT OF WISCONSIN, *ss:*

126 A. Fleming, first duly sworn on oath, says that Byron Kilbourn, Moses Kneeland, Jackson Hadley, D. W. Keyes, and Prentiss Dow, are necessary and material witnesses for the Milwaukee and Minnesota Railroad Company, defendant in said cause, and that Winfield Smith, esq., residing in the city of Milwaukee, in said district, would be a suitable person for commissioner, to be named in a commission to be issued to take testimony of said witnesses.

A. FLEMING.

Subscribed and sworn to before me, this 26th day of December, 1860.

EDWARD KURTZ,
*U. S. Com'r.*

*Interrogatories.*

District court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON *et al.*
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

Interrogatories to be administered to Byron Kilbourn and Moses Kneeland, two witnesses to be produced, sworn, and examined on the

part of the Milwaukee and Minnesota Railroad Company, on a commission to be issued to Winfield Smith, esq., commissioner:

Interrogatory first. What is your name, age, and residence?

2nd interrogatory. Were you ever, and when, and how long, and from what time to what time, any, and what, officer of the La Crosse and Milwaukee Railroad Company?

3rd interrogatory. Were you ever, and when, and during what length of time engaged in the management of the affairs of the La Crosse and Milwaukee Railroad Company; if so, in what capacity; whether as agent, director, president, or otherwise?

4th interrogatory. Were you any, and what, officer of the said La Crosse and Milwaukee Railroad Company at the time of the making of the second mortgage on the eastern division of said railroad company's railroad, so called, to complainants in this cause; and were you at that time acquainted with the financial affairs and the general business of said company?

5th interrogatory. Do you know whether James T. Soutter, one of the complainants in this cause, ever held or claimed to own any of the bonds secured by said second mortgage; if yea, when, how many, of whom, and when, and where did he obtain them, how and upon what consideration, and under what circumstances did he obtain them, and what and how much did he pay for the same, and to whom did he pay it, and in what was the payment made? State fully the entire history of any and all contracts, negotiations, or agreements, or disagreements between said La Crosse and Milwaukee Railroad Company and said Soutter, or between said Soutter and any officer or agent of said company, in relation to any of the bonds secured by said second mortgage, and claimed to be owned by said Soutter.

127 6th interrogatory. Have you stated in reply to the last interrogatory all you know of each and every of the matters there enquired of?

7th interrogatory. Do you know whether Greene C. Bronson, one of the said complainants, at any time, and what time, held and claimed to own any of the bonds secured by said second mortgage? If so, state fully all you know of the time and place when and where he obtained said bonds, how many he obtained, upon what consideration and under what circumstances he obtained the same, and how much and what he paid therefor; and state fully the history of all and each and every contracts, negotiations, agreements or disagreements, transactions or interviews between said Bronson and said La Crosse and Milwaukee Railroad Company, or between said Bronson and any agent, officer, or stockholder of said company, in relation to any of said bonds secured by said mortgage, and claimed and held by said Bronson.

8th interrogatory. Have you, in reply to the last interrogatory, answered all that you know of the matters there inquired about? If not, now state the same fully.

9th interrogatory. Do you know whether one Selah Chamberlain now owns and holds any of said bonds secured by said second mortgage; if yea, when did he obtain them, of whom, upon what consideration, and under what circumstances did he obtain the same? State

fully the entire history of all negotiations, contracts, or agreements between said Chamberlain and the La Crosse and Milwaukee Railroad Company, or between *said Chamberlain and the La Crosse Railroad Company, or between* said Chamberlain and any officer or agent of said company in relation to any of said bonds claimed or held by said Chamberlain.

10th interrogatory. If you answer to the last interrogatory that said Chamberlain received two hundred of said bonds as damages for the breach of a certain contract between said Chamberlain and said railroad company, state particularly what contract, and whether said contract or a copy of the same is now under your control; if so, attach the same, or a copy thereof, to your answer to these questions.

11th interrogatory. Do you know Prentiss Dow? If so, state whether he was ever financial agent for said La Crosse and Milwaukee Railroad Company. If so, when, and how long, and during what time? State whether he has ever been any agent of said company, and, if so, what agent, and for what purpose, and what he was required to do and did do for said company?

12th interrogatory. Did said Prentiss Dow ever claim to own any of said bonds secured by said second mortgage; if so, when, where, if where, how, under what circumstances, and for what consideration did he receive the same? State fully the entire history of the manner in which he obtained the same, and what he paid therefor, and in what it was paid.

13th interrogatory. Were said bonds, secured by said second mortgage issue, to secure or pay any specific indebtedness of the said company existing at the time the same was issued, or were the same issued to be subsequently sold by said company in the market?

128 14th interrogatory. Did Prentiss Dow have anything, and what, to do for said company in the disposition of said bonds, or did he at any time have any, and how many, of said bonds in his hands; and if so, for what purpose?

15th interrogatory. Did Prentiss Dow at some time have certain of said bonds in his hands belonging to said company which he refused to deliver to said company, and did said company have any negotiation with him in relation to the same? If so, state fully all the history and circumstances of said negotiation between said company and said Dow, and whether said company gave any, and how many, of said bonds to said Dow, or sold any, and how many, to him, and upon what consideration and under what circumstances, and how much, and what and in what did said Dow pay for said bonds?

16th interrogatory. Do you know anything of the disposition of bonds secured by said second mortgage by said La Crosse and Milwaukee Railroad Company? If yea, state fully and at large all that you know about the time, place, and circumstances of the disposition by said company of any of said bonds, to whom, and upon what consideration, and for what purpose said bonds were disposed of respectively, and whether sold, pledged, mortgaged, hypothecated, or otherwise, and how otherwise, disposed of; and state fully what said company received for said bonds disposed of by it, and how much said company received in cash from each of the persons to whom any of

said bonds were disposed of, and how much in other, and what other, things, and the gross sum in cash received by said company from the disposition of all said bonds, and the gross amount or amounts of any other thing or things received by said company for said bonds. State fully whether any of said bonds were fraudulently obtained or withheld from said company; and if so, by whom and how many, and under what circumstances, and whether any of said bonds were obtained or withheld from said company by any, and what, person or persons without consideration; and state fully all you know about the disposition of each and every of the bonds secured by said mortgage by said company. State fully, and copiously, and diffusely.

17th interrogatory. How many, and which, purchasers of said bonds paid any portion of the purchase price thereof in the stock of the company, and how much of said price was by each purchaser paid in stock of said company?

18th interrogatory. Have you stated all and everything you know and can state in reply to the foregoing interrogatories, numbered 16 and 17? If not, state the same now here, fully and at large.

19 interrogatory. Do you know any matter or thing not hereinbefore stated tending to show that the second mortgage ought not to be foreclosed to its full amount, or tending to show that any purchaser or any present holder ought not to have and recover the full amount due on the bonds held by him? If so, state the same fully and at large.

20th and last interrogatory. Do you know or can you set
129 forth any other matter or thing whatever that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

MAT. H. CARPENTER,
*Carpenter & Gridley, sol'rs for the Milwaukee and Minnesota Railroad Company.*

Interrogatories to be propounded to Prentiss Dow, a witness to be produced, sworn, and examined in this cause on behalf of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, on commission to be issued to Winfield Smith, esqr., commissioner to take the testimony of said Dow and others.

First interrogatory. What is your name, age, residence, and present occupation, employment, or business?

2nd interrogatory. Were you ever, and when, and how long, and from what time to what time, any agent or officer of the La Crosse and Milwaukee Railroad Company, and were you ever, and when, and to what amount, a stockholder or owner of any, and how much, stock of said company?

3d interrogatory. Were you ever, and when, and are you now, the holder or owner of any, and how many, of the bonds of said La Crosse and Milwaukee Railroad Company secured by the second mortgage on eastern division, so called; if yea, of whom, and when and where did you obtain the same, and upon what consideration, and in what man-

ner, and *in what*, did you pay for any and all of said bonds you now own or ever owned?

4th interrogatory. Do you know, and can you set forth, anything of the disposition by the La Crosse and Milwaukee Railroad Company of any of the bonds secured by the second mortgage on the eastern division, so called, said mortgage to the complainants in this cause? If yea, state fully and at large all that you know about the time, place, and circumstances of the disposition by said company of any of said bonds, to whom, and upon what consideration, and for what purpose, and how said bonds were disposed of respectively, and whether sold, pledged, mortgaged, hypothecated, or otherwise, and how otherwise disposed of; and state fully what said company received for said bonds disposed of by it, and how much said company received therefor in cash from each of the persons to whom any of said bonds were disposed of, and how much in other, and what other, things, and the gross sum in cash received by said company from the disposition of all said bonds, and the gross amount or amounts of any other thing or things received by said company for said bonds; and state fully whether any of said bonds were fraudulently obtained or withheld from said company, and if so, by whom and how many and under what circumstances, and whether any of said bonds were obtained or withheld from said company by any, and what, person or persons without consideration; and state fully all you know about the disposition of each and every of the bonds
130 secured by said mortgage by said company. State fully and accurately.

5th interrogatory. How many, and which, purchaser of said bonds from said company paid any portion of the purchase price thereof in the stock of the said company; and how much of said purchase price was by each purchaser paid in stock of said company?

6th interrrogatory. Have you stated all and everything you know and can state in reply to the foregoing interrogatories, numbered respectively 4 and 5? If not, state the same now and here fully.

7th interrogatory. Did you, at any, and what, time have any, and what, agency for the La Crosse and Milwaukee Railroad Company in regard to the disposition of any of said bonds? If yea, state fully and precisely what you did, and all you did in relation to said bonds and to the disposition thereof; how many of said bonds, if any, you ever held for the company in any, and what, capacity, and how, when, where, upon whose order, and upon what consideration, and for what purpose, you parted with possession of any bonds so held by you.

8th interrogatory. Were you ever, and when, where, and to what extent, the keeper of any, and what, book of records or accounts for said La Crosse and Milwaukee Railroad Company, or did you ever make, or keep, or have any book or memoranda showing the disposition of any of said bonds; if so, where is the same. Is it subject to your control? If yea, attach the same or copies thereof, so far as the same relate to such disposition of said bonds, to your answer to this interrogatory.

9th interrogatory. Is the following a transcript of an entry by you in some, and what, book of your account with the La Crosse and Milwaukee Railraid Company, viz:

| 1857. | | | | 1857. | | | |
|---|---|---|---|---|---|---|---|
| August | 1 | To cash | $242 77 | July | 23 | By cash | $225 00 |
| | | | | | | By cash | 17 77 |
| | | | 242 77 | | | | 242 77 |
| Sept. | 4 | To cash | 157 18 | August | 18 | By cash | 200 00 |
| | 26 | To 3 bonds, 441, 2, 3 | 3,000 00 | | | By cash | 300 00 |
| | 28 | To 1 S. S. bond | 1,000 00 | Sept. | 1 | By 10 shs. stock | 1,000 00 |
| Oct. | 30 | To bonds | 11,000 00 | | | By 1 bond | 1,000 00 |
| | | To Home office | 1,000 00 | | 12 | By cash | 157 18 |
| Nov. | 16 | To Halliday, in error | 2,000 00 | Oct. | 5 | By 1 8 per ct. bond | 1,000 00 |
| | | | | | 6 | By cash | 100 00 |
| | | | | | 30 | By sundries | 5,250 00 |
| | | | | | 31 | By cash | 150 00 |
| | | | | Nov. | 10 | By stock from Halliday | 2,000 00 |
| | | | | | 16 | By 4 shs. stock | 400 00 |
| | | | | | | By 4 S. & S. bonds | 4,000 00 |
| | | | | | 17 | By dis | 2,600 00 |
| | | | 18,157 18 | | | | 18,157 18 |
| | | | | 1858. | | | |
| | | | | Feb. | 19 | Paid Foster, bk. rep | 5 00 |
| | | | | | | Paid B. K. Dow | 75 00 |

10th interrogatory. If you swear that you cannot say that the foregoing statements of account is a correct transcript of an account in your handwriting, please examine the same and state whether you recognize any, and how many, and what, entries thereof as being correctly transcribed or taken from any account made by you; and state whether any, and how many, and what, of said entries are correct statements of your account with the La Crosse and Milwaukee Railroad Company.

11th interrogatory. Are any of the entries in the debit side of said account correct entries of any of said second mortgage bonds sold by said company to you, or held or taken by you; and if so, which and how many of said entries in said debit side relate to said second mortgage bonds?

11½ interrogatory. To what account in the company's ledger did you debit the item of sundries credited in your said account?

12th interrogatory. How many of said second mortgage bonds did you, at any and what time, buy from, or take and have from, the La Crosse and Milwaukee Railroad Company, and what did you give or pay to said company therefor respectively? State fully the items and particulars of your payment to said company for said bonds, and to what officer or agent of said company, and when, where, and under what circumstances you paid for the same. Was any part thereof, if so, how much, paid by you in money to any, and what, officer of said company? Was any part thereof paid by you to any, and what, officer of the company, in any, and what, other thing or things than money? Was any part, and what part, thereof paid by you to any, and what, officer of said company, in stock of said company? If so, when, where, under what circumstances, in whose presence, and with the knowledge and consent of any, and what, stockholders or officers of said company?

13th interrogatory. If, in answer to the last interrogatory, you answer that you did pay some part of the purchase money of any of said second mortgage bonds in stock of said company, then state, now here, fully and particularly, the manner in which such payment was made; whether you held certificates of stock; if so, how many, or for how many shares of stock, and when, where, of whom, in what name and for what price and upon what precise consideration you became the owner of said stock, and whether you effected said stock payment for said bonds by cancelling said certificates. If so, in whose presence were the same cancelled and by whom, or did you assign said certificates of stock to any, and what, officer or agent of said company,
or any, and what, other person; if so, when, where, and in
132 whose presence was the same assigned? And state fully the
mode of effecting said payment for said bonds in stock, so far as the same were paid for in stock.

14th interrogatory. Look at the entry on the credit side of the account given in interrogatory ninth, as follows, viz: "Oct. 6, sundries, $5,250," and state whether you ever entered that, or any, and what, similar credit to yourself, on any book kept by you for the La Crosse and Milwaukee Railroad Company, or kept by you at all; and state what particular things made up and constituted that amount of five thousand two hundred and fifty dollars, or such amount

as you answer you so credited yourself with; and give, in detail, every item, whether of cash, services, or other, and what other, thing; and state how much of each, and to what officer or agent of said company, any, and what, part of said cash and other things respectively, was paid or delivered by you, and when, where, and what were the services rendered; and explain fully the component items of said entry.

15th interrogatory. If, in reply to the last interrogatory, you say you cannot answer what made up said item, then answer this: Can you now recollect and state any one or more item or items, or any one or more things that were included in and formed a part of said entry? If so, state the same fully, so far as you can now recollect the same, and explain, set forth, and answer every fact which shows that such item or thing was proper to be credited to you in said account.

16th interrogatory. Do you know D. E. Wheeler, of the city and State of New York? Did he at any, and what, time buy or have from said La Crosse and Milwaukee Railroad Company, or any other, and what other, person, any of said second mortgage bonds? If so, state how many, when, where, of whom, under what circumstances, and upon what consideration did he obtain the same? What did he give or pay said company therefor? How much, and in what, and to whom did he make said payment. State fully all you know of the history, nature, course, and result of any and all contracts, negotiations, agreements, or disagreements between said Wheeler and said company, or between said Wheeler and any officer or agent of said company, in relation to said second mortgage bonds, or in relation to the purchase, retention, possession, delivery, or safe keeping of any of said bonds, as fully as if you were in detail questioned concerning it.

17th interrogatory. Have you, in your answer to the last interrogatory, set forth all that you know in relation to the matters there inquired of? If not, set the same forth here and now, in detail and extreme particularity.

18th interrogatory. Did you ever make any entry or entries of account between said Wheeler and said La Crosse and Milwaukee Railroad Company, in relation to said second mortgage bonds? If so, state where said original entry now is, and whether the following is

133 a transcript therefrom. That is to say:

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sept. 4 | To dis. &c | $2,115 00 | Aug. 25 | By cash | $3,000 00 |
| 1 | To 34 bonds, 245 to 197; 8, 226, 7; 296 to 319 | 34,000 00 | Sept. 2 | By cash | 3,200 00 |
| | | | 3 | By cash | 5,615 00 |
| | | | 4 | By sundries | 18,700 00 |
| 6 | To 7 bonds | 7,000 00 | 6 | By stock | 3,000 00 |
| 28 | To 4 bonds, 444 to 447 | 4,000 00 | 15 | By cash | 1,000 00 |
| 1858. | | | 25 | By cash | 1,000 00 |
| Jan. 14 | To 1 bond, 165 | 1,000 00 | 28 | By sundries | 2,450 00 |
| | | | Oct. 3 | By cash | 200 00 |
| | | | Nov. 13 | By stock | 800 00 |
| | | | 1858. | | |
| | | | Feb. 1 | By dis. | 10,050 00 |
| | | | 12 | By sundries | 1,100 00 |
| | | 50,115 00 | | | 50,115 00 |

19th interrogatory. Look at the statement of account in last 18th interrogatory, and if you cannot state that all of the same is a transcript of any entry or entries made by you, then say whether you recognize any, and what, entry or entries of said account, as having been at any, and what, time made by you, and particularly state whether you recollect anything of the entries in the credit side of said account, as follows, viz:

| | | |
|---|---|---|
| Sept. 4. | Sundries | $18,700 |
| Sept. 28. | Sundries | 2,450 |
| Feb'y 12, 1858. | Sundries | 1,100 |

If yea, state whether you know what items or things constituted said amounts respectively, and set the same forth as far as you know, and set forth fully and particularly everything you know in relation to any such credits at any time claimed by said Wheeler against said company, or by said company allowed to said Wheeler in payment for any of said second mortgage bonds? What is the meaning of "dis, &c.," in debit side of above account? How was that sum made up, and to what account is it cred ted in company's books?

20th interrogatory. Do you know whether Greene C. Bronson, one of the complainants in this cause, ever held or owned, or claimed to hold and own, any, and how many, of said second mortgage bonds? If yea, state when, where, of whom, and under what circumstances, and upon what consideration he received or bought the same; and what, and in what, and in what manner, and to what officer or agent of the employment he paid for the same? And if you say he paid for the same in the stock of the La Crosse and Milwaukee Railroad Company, then state how, when, where, of whom, at what price, and upon what consideration he received said stock, and whether said stock had ever been subscribed for by any, and what, person, and whether the
134 amount of said stock, or any and what part thereof, had ever been paid to the said company for said stock.

21 interrogatory. If in your answer to any of these interrogatories you say that any part of the purchase price of any of said bonds was paid to said La Crosse and Milwaukee Railroad Company in stock of said company, then answer whether any, and what, part of said stock so received had been issued by said railroad company without consideration; and state whether, while transfer agent of said railroad company, you ever issued any, and how many, certificates of stock of said company, to any, and what, person or persons, without the full par face thereof being paid to said company; and if so, state how much was paid to said company upon any and every certificate of full paid stock ever issued by you as aforesaid.

22 interrogatory. Did you ever know Seth R. Foster, of the city of New York, now deceased; if yea, do you know of any transactions between him and the La Crosse and Milwaukee Railroad Company in relation to any of said second mortgage bonds? If so, state fully all you know about the same.

23 interrogatory. Did the said Foster ever receive any, and how many, of the said bonds as security for any loan? If so, state all you know about the loan; whether said Foster held or had previously

held any stock of said company as security for said loan; if so, how much? Whether said Foster had disposed of said stock prior to the receipts by him of said second mortgage bonds; if so, when and at what price? And state fully all you know in relation to these transactions of your own knowledge or by the admissions or statements of said Foster.

24th interrogatory. Is the following a correct transcript of an account kept by you between said company and said Foster; that is to say:

| 1857. | | | 1857. | | |
|---|---|---|---|---|---|
| Sept. 1 | 13 bonds, 211 to 223 | $13,000 00 | Sep. 3 | By cash | $5,200 00 |
| 19 | 12 bonds, 413 to 424 | 12,000 00 | | By S. & C. & S. bonds | 5,000 00 |
| 28 | 25 bonds, 511 to 535 | 25,000 00 | 19 | By S. & C. & S bonds | 5,000 00 |
| Dec. 18 | Dis. ent. twice | 10,000 00 | | By cash | 4,800 00 |
| | | | 23 | By cash | 10,000 00 |
| | | | 30 | By S. & C. & S. bonds | 10,000 00 |
| | | | Nov. 17 | By dis. | 10,000 00 |
| | | | Dec. 18 | By dis. | 10,000 00 |
| | | 60,000 00 | | | 60,000 00 |

If yea, what is the meaning of S. & C. & S. bonds, $10,000, in said account?

25th interrogatory. Look at the copy of account in the last interrogatory, and if you have said, in reply to the last interrogatory, that you do not know that all of said account is a transcript as aforesaid, then say whether you know and now recognize in said statement of account any item or items made or entered by you, and par-
135 ticularly look at the following entries on the credit side of said account, viz:

Sept. 3, 1857. By cash..... 5,200
Sep. 19, " By cash..... 4,800
Sep. 23, " By cash..... 10,000

and answer whether said sums were paid by said Foster to said company or any, and what, officer of said company, or whether the same were allowances pretended to be made to said Foster as commission upon some, and what, loan, service, or other matter. State fully all you know of the manner in which said Foster paid or account to said company for the said bonds received by him from said company.

CARPENTER & GRIDLEY.

Interrogatories to be propounded to Dwight W. Keyes, a witness, to be produced, sworn, and examined on the part of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, before Winfield Smith, commissioner.

1st interrogatory. What is your name, age, business, and residence.

2d interrogatory. Have you been at any, and what, time any officer in the Milwaukee and Minnesota Railroad Company; and are you any, and what, officer of said company at the present time?

3d interrogatory. Have you any, and what, means of knowing what

was the amount of the earnings of the La Crosse and Milwaukee railroad from the 1st day of October, 1857, to the 1st day of July, 1860? If yea, state fully what those earnings were, in each month, if you are able to do so, and annex as a part of your answer to this question a tabular statement showing the amount of gross and nett earnings in each month during that period.

4th interrogatory. Who received the earnings of said railroad from the 1st day of October, 1857, to the first day of December, 1859; and who received the earnings of said road from first day of December, 1859, to the eleventh day of June, 1860?

CARPENTER & GRIDLEY, *Sol'rs.*

Interrogatories to be propounded to Jackson Hadley, a witness to be produced, sworn, and examined on the part of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, before Winfield Smith, commissioner.

1st interrogatory. What is your name, age, residence, and occupation?

2nd interrogatory. Were you ever, and when, and how long, any, and what, officer of the La Crosse and Milwaukee Railroad Company?

3d interrogatory. Do you know anything about the disposition by said company of the bonds of said La Crosse and Milwaukee Railroad Company called second mortgage bonds, secured by mortgage to the complainants in this cause? If yea, state fully all you know
136 about it, to whom they were sold or delivered, and in what manner, for what purpose, at what price, and how paid for; state fully.

4th interrogatory. State particularly all you know of the sale or disposition of said bonds to Selah Chamberlain, Greene C. Bronson, James T. Soutter, Prentiss Dow, D. E. Wheeler, and S. R. Foster; giving full statements as to how many bonds each received, what in amount and kind each paid for those by him respectively received; and if you say that any of them paid in stock, state fully what was the market price of said stock at the time the same was so paid, respectively.

5th interrogatory. At the time the said second mortgage was executed and the bonds thereby secured disposed of, was the La Crosse and Milwaukee Railroad Company indebted in any, and about what, amount that was in no way secured by mortgage or other lien upon the property of said company, and what was the market value of the stock of said company at those times?

6th interrogatory. If you answer that any of said bonds were paid for, in whole or part, in the stock of said company, then state here, and now, whether all said stock so received had been regularly subscribed and paid for to the said company, under its charter, and if not, state all you know of the particular persons who paid in stock which had not been thus fully paid for to the said company.

7 interrogatory. What was the amount of stock issued by said company prior to the making of said second mortgage, which had been regularly subscribed and paid for in cash; and what was the amount which had been subscribed for and paid in anything, and

what thing or things, except cash; and what was the amount of stock issued which had not been directly paid for to said company?

8th interrogatory. If you cannot answer the foregoing seventh interrogatory exactly, then, here and now, answer each clause of the same as accurately as you are able, and state about the amounts, respectively.

9th interrogatory. What amount did said company receive in cash for said million of second mortgage bonds; how much in the stock of said company, and how much in other, and what other things, and what was the then market value of said stock, and of said other things than cash received by said company for said million bonds?

CARPENTER & GRIDLEY, *Sol'rs.*

*Exceptions to Interrog's.*

District Court of the United States for the district of Wisconsin.

GREENE C. BRONSON *et als.*, *complainants*, *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*, *defendants*. } In equity.

137 The complainants except to the interrogatories and to each and every of them filed by the Milwaukee and Minnesota Railroad Company to be administered to Byron Kilbourn, Moses Kneeland, Prentiss Dow, and Jackson Hadley, for the reasons following, to wit:

1st. Because there is nothing in the answer and no issue between the parties to which the answer called for by the interrogatories would be relevant.

2d. Because the Milwaukee and Minnesota Railroad Company have no interest in any of the accounts of the Milwaukee & La Crosse Railroad Company, with its agents, or the amounts which were paid for the various bonds sold, whether secured or unsecured.

3d. Because the rights of the Milwaukee and Minnesota Railroad Company were, by the terms of the mortgage through which they became interested in the property subject to complainants' mortgage, were subject to the mortgage of the complainants for one million dollars and interest, and the sale by virtue of which said company was organized was subject to said complainants' mortgage.

4th. Because the La Crosse and Milwaukee company could, under the law, sell their bonds at any rate agreed upon less than par.

5th. And the complainants especially except to the 5th interrogatory propounded to Byron Kilbourn, for the reasons hereinbefore assigned, and for the following special reasons, viz:

1st. Because it nowhere is alleged in the answer, nor does it now appear, that said Soutter is the present holder of said bonds, or that the present holder had notice of the nature of the transaction between said La Crosse & Milwaukee Railroad Company and said Soutter.

2d. Because said bonds were instruments under seal, and the defendants cannot enquire into their consideration.

3d. Because the La Crosse and Milwaukee Railroad Company conveyed the division of their road, and their franchises and all other

Bronson v. La Crosse Railroad Company
p 1

Pomeroy's Lessee v. Bank of Indiana
p 677

Gaylord Gr v Kelshaw 869

US v Deleota and al 907

Wheeler v Sage 957; 1668.

United States v Yorba 1101

Burr v Duryee supage 1149

United States v Arce 1633

US v DeLaPortilla 1699

US v Moreno 1757

US v Carrillo 1793

US v Espinosa et al 1823

US v Ursua et al 1861

U.S. v. Olvera 1895.

property for which a decree is prayed in the bill, to the complainants in trust, to secure the payment of one million dollars in bonds, which bonds have been certified by these complainants, and the extent of the right of the complainants under said trust deed had been adjusted and agreed upon between said company and these complainants before said so-called third mortgage was given.

6th. And the complainants further except to the 7th interrogatory addressed to said Kilbourn, in addition to the general reasons hereinbefore assigned, for the special reasons above given as to said 5th interrogatory, and also for the following reasons, to wit:

1st. Because it calls for interviews between said Bronson and any stockholder as agent of the company, and also to all negotiations, agreements and disagreements between said Bronson and said company.

2d. Because said interrogatory calls for impertinent matter.

7th. And for further exception to the 9th and 12th, 15th,
138 16th and 17th interrogatories, severally propounded as aforesaid, the complainants assign the same reasons above assigned as to said 5th and 7th interrogatories.

8th. And for further exception to 13th interrogatory the complainants assign the following:

1st. That the resolutions and books of the company, and language of the trust deed and bonds, are the best and only proof of the object of the company in issuing said bonds.

2d. The complainants and bondholders cannot be affected by motions of directors.

3d. Because the interrogatory does not show whether the motive of the witness or of the board were called for.

8½. And for further exceptions to the 19th interrogatory, propounded as aforesaid, the complainants assign the same causes of exception as are above assigned as to the 5th interrogatory, and also the following:

1st. It makes the witness judge as to the effect of the testimony, and calls for all matters which, in his opinion, tend to show that any bondholder ought not to receive the full amount of his bond.

9th. And for a further exception to the 3d, 4th, 5th, 7th and 12th, 16th, 20th, 21st and 22nd interrogatories propounded to Prentiss Dow, the complainant assigns the same cause of exception as they have hereinbefore assigned to the 5th interrogatory propounded to Byron Kilbourn and Moses Kneeland.

10th. And for a further exception to the 8th, 9th, 10th, 11½ and 12th, 17th, 18th, 19th, 24th and 25th interrogatories propounded to said Dow, the complainants assign the same causes of exception as to said 3rd, 4th, 5th, 7th, 12 and 16 interrogatories, and also the following:

1st. That the entries of the witness are not admissible as evidence against the complainants as bondholders.

11th. And for further exceptions to the 13th, 14th, 15th and 23rd interrogatories propounded to said Dow, the complainants assign the same cause of exception as are assigned to the 5th interrogatory propounded to said Kilbourn and Kneeland, and also the following:

1st. That there is no issue as to the title of said Dow or other persons to stock, or as to the consideration paid for it, or as to any

account of said Dow with the said La Crosse and Milwaukee Railroad Company.

12th. For exception to the 3rd and 4th interrogatories propounded to said Keyes, the complainants assing the following cause:

1st. That the earnings of the road before the complainants had possession are immaterial.

13th. And for further exception to the 3rd, 4th and 5th interrogatories propounded to Jackson Hadley, the complainants assign the same causes of exception as are assigned to the 5th interrogatory propounded to said Kilbourn and Kneeland.

14th. And for further exception to said 5th, 6th, 7th, 8th,
139 and 9th interrogatories propounded to Jackson Hadley, the complainants assign the same causes as are assigned to said 5th interrogatory, and the following:

1st. That no issue is made as to the value of stock.

2nd. There is no issue made as to subscription for stock.

THOMAS L. OGDEN, *Sol. for Comp't.*

*Cross-interrogatories.*

District court of the United States for the district of Wisconsin—In equity.

GREENE C. BRONSON *et al.*
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

Cross-interrogatories to be administered to Byron Kilbourn and Moses Kneeland.

First cross-interrogatory. If you answer the fifth direct interrogatory in the affirmative, state your means of knowledge as to each and all of the facts testified to by you in your answer to that interrogatory. If your knowledge was derived from conversations with the complainant James T. Soutter, state when and where such conversation or conversations took place, and who else was present. If you testify as to facts which took place in your presence, state who else was present. If you testify as to any amounts of money paid by the said Soutter, state if you were present, and if you learned from him that that was the entire sum paid.

Second cross-interrogatory. If you answer the seventh direct interrogatory in the affirmative, state your means of knowledge as to each and all the facts testified to by you in your answer to that interrogatory. If your knowledge was derived from conversation with the complainant Greene C. Bronson, state when and where such conversation or conversations took place, and who else was present. If you testify as to facts which took place in your presence, state who else was present. If you testify as to any amounts of money paid by the said Bronson, state if you were present, and if you learned from him if that was the entire sum paid.

Third cross-interrogatory. If you answer the ninth direct interrogatory in the affirmative, state your means of knowledge as to each and all the facts testified by you in your answer to that interrogatory,

discriminating particularly those facts of which you were personally cognizant, and those your knowledge of which was derived from other and what sources.

Fourth cross-interrogatory. If you answer the twelfth direct interrogatory in the affirmative, state your means of knowledge as to each and all the facts testified to by you in that interrogatory, discriminating particularly those facts of which you were personally cog-
140 nizant, and those your knowledge of which were derived from other and what sources.

Fifth cross-interrogatory. Have you the resolution of the board of directors of the La Crosse and Milwaukee Railroad Company authorizing the issue of the bonds mentioned in the 13th direct interrogatory? If you have, give a copy of the resolution; if you have not, give its purport.

Sixth cross-interrogatory. If you answer the fifteenth direct interogatory in the affirmative, state for what purpose the said company required the said bonds, and what reason, if any, the said Dow gave for not delivering the same. If you state that the said company gave any of said bonds to said Dow, or sold any of them to him, state fully and particularly your means of knowledge as to each and all of said facts. If you were present, who else was present, and what was said?

Seventh cross interrogatory. State fully and particularly as to your knowledge of each and all the various facts asked of you in the sixteenth direct interrogatory, and state whether you, or either and which of you, acted as agent of the company in the negotiating and disposing of the said bonds, or whether either, and which of you, were engaged, either directly or indirectly, in the disposal and negotiation of the said bonds. State, also, whether you, or either and which of you, received, directly or indirectly, any of the said bonds; state the consideration you paid therefor, whether for money, stock, or services, and for how much money, or stock, or what services, and how many of said bonds you received.

Eighth cross-interrogatory. State your means of knowledge as to the matters enquired of in the seventeenth direct interrogatory.

Ninth cross-interrogatory. State fully and at large any matter or thing tending to show that the second mortgage ought to be foreclosed, and that the third mortgage bondholders ought not to dispute such foreclosure.

Tenth cross-interrogatory. State as nearly as you can the amount of bonds on the different divisions of the La Crosse and Milwaukee Railroad Company that have been issued and transferred to various parties, the consideration received for which was neither money, right of way, depot grounds, grading, superstructure, nor rolling stock, and what the consideration was, and whether you or either and which of you, as an officer, and what officer, of said company, assented to such transfer, or to any and which of them.

THOMAS L. OGDEN, *Sol. for Compl'ts.*

Cross-interrogatories to be propounded to Jackson Hadley.

First cross-interrogatory. If you answer to the third direct interrogatory in the affirmative, state as to each and every fact testified to

by you, your means of knowledge; and if you relate matters or conversations which occurred in your presence, state when the same occurred, and who else was present.

141 Second cross-interrogatory. State your means of knowledge as to each and all the matters contained in the fourth direct interrogatory.

Third cross-interrogatory. State the amount of the indebtedness of the said company that was not incurred for right of way, depot grounds, superstructure, or bridging, grading, or rolling stock, and for what it was incurred.

Fourth. State what amount of such indebtedness was incurred when you were a member of the board of directors, and what amount of stock was issued by the board of directors while you were a member that was not regularly subscribed for under the charter and paid for, and to whom and for what consideration it was issued.

Fifth cross-interrogatory. State your means of knowledge as to each and every fact testified to by you in your answer to the 5th, 6th, 7th, and 8th and 9th direct interrogatories.

Six cross-interrogatory. State the amount of stock, bonds, or other securities received by you from the said company, or of which you received the proceeds, and the consideration you gave therefor, specifying the particular items.

THOMAS L. OGDEN,
*Sol. for Compl't.*

*Certificate.*

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, [SEAL OF COURT.] in the said district of Wisconsin, this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the said United States the eighty-fifth.

J. M. MILLER, *Clerk.*

*Deposition.*

District court of the United States for the district of Wisconsin—In equity.

GREENE C. BRONSON *et al.*
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et al.*

Examination and deposition of witnesses produced, examined, and sworn in the above-entitled cause on the part of the Milwaukee & Minnesota Railroad Company, in pursuance and by virtue of the annexed commission, before Winfield Smith, commissioner.

MONDAY, 21 *January*, 1861.

142 *Deposition of Moses Kneeland.*

Moses Kneeland, being a witness named in the said commission, produced, sworn, and examined, says, in answer to the several interrogatories to be propounded to him, as follows:

To the first interrogatory. My name is Moses Kneeland; my age is fifty years; my residence is Milwaukee, Wisconsin.

To the second interrogatory. I was a director in the company from February, 1854, I think, until the about the 26th of May, 1858. I was vice-president of the company, I think, from October, 1854, to the spring of 1857. I was on the executive committee, I think, all the time I was vice-president, and I think until some time in May, 1858.

To the third interrogatory. I was so engaged, in connection with others, from February, 1854, I think, until in May, 1858, but from May, 1857, to some time in October, 1857, I had very little to do with the management of the affairs of the company, and I was in Minnesota nearly all that time.

To the fourth interrogatory. At the time of making that mortgage I was a director and one of the executive committee, but I do not recollect that I was consulted in regard to making it. I was somewhat acquainted with the financial affairs and the general business of the company, but not so well as I had been.

To the fifth interrogatory. James T. Soutter, one of the complainants, did claim, in February, 1858, I think, and perhaps before, to own sixty-five bonds secured by said second mortgage, which he had retained out of those placed in his hands for his signature, as trustee in the mortgage, by some agent of the company, I think Prentiss Dow. He, Soutter, had received them in New York previous to that time, simply to be signed by him as trustee, and for no other purpose that I know of. We understood from the company's agent that he claimed a right to retain some of them, and I called on him to see him about the matter and to demand the bonds retained by him, at the request of Mr. Kilbourn, president of the company. I think the time must have been earlier than I have mentioned, and in November or December, 1857. It was in the city of New York. There had been some conversations, I understood, between him and other agents of the company before I saw him. In his conversation with me he claimed the right to retain sixty-five of the bonds, ten for services of himself and Greene C. Bronson as trustees in this mortgage, and the other fifty-five on the ground that he had previously sold income bonds to the amount of $55,000 to some friends, and as they were not secured on any portion of the line of the road, he claimed to hold these fifty-five second mortgage bonds to secure them. I made a special demand of the fifty-five bonds for the company at that time, leaving the other ten for subsequent settlement. I denied in that conversation, on the part of the company, his right to retain any of the bonds. The company always denied, and continued to deny, his right to

143 any of those bonds, so far as I know. He continued to retain them, refusing to surrender any of them. He never paid anything for any of those bonds that I know of, and never claimed to have paid anything for them, or to have any other right to them than as I have mentioned. I have no other personal knowledge of the matter further than I have stated.

To the sixth interrogatory. I think I have.

To the seventh interrogatory. I know that Greene C. Bronson, one of the complainants, in the fall of 1857, did hold and claim to own fifteen of the bonds secured by said second mortgage, (amounting to $15,000.) It appears from the books of the company that he got those bonds September 10th, 1857. I do not know where he got them, nor under what circumstances. I know from the books of the company and from what Bronson (the complainant) told me, that he obtained them for stock of the company, which he had previously held, to the amount of $15,000, nominal value, and that he paid nothing else than said stock for said bonds. He said he thought that was right, for he had been a trustee of the company, and had talked it up a good deal.

To the eighth interrogatory. I have stated all that is within my personal knowledge.

To the ninth interrogatory. I know that Selah Chamberlain has owned and held two hundred of said bonds, (amounting to $200,000.) I do not certainly know that he still holds them. He obtained them in the fall of 1857 from the La Crosse & Milwaukee Railroad Company, by some officer, but which I don't know. I took no part in making the bargain, but I know, from information received by me in my position as an officer of the company, from the written contract between the company and Mr. Chamberlain, and from what Mr. Chamberlain has frequently told me, that the company allowed him two hundred thousand dollars for detention and damages on his contracts with the company; also, that Mr. Chamberlain, having first received the bonds (I suppose) for the purpose of raising money on them for the company, afterwards retained them by consent of the company, or of some of its officers, to apply on the amount so allowed him, and that he intended (as he said) to allow the company for said bonds fifty cents on a dollar, or $100,000. Whether the company assented to that I don't know. I do not know what transpired at the interviews between him and the officers of the company in relation to those bonds. I took no part in and was not present at any such interviews.

To the tenth interrogatory. The contract, for the breach of which damages were so allowed to Chamberlain, was made by him and said company in 1856, and was for the construction by him of the railroad of the company from Portage City to La Crosse. I have not the contract nor a copy of it under my control.

To the eleventh interrogatory. I know Prentiss Dow. He was financial agent of the La Crosse & Milwaukee Railroad Company, appointed about the first of July, 1857, I think, and remaining in

144 that position until some time in February or March, 1858, I think. He was only the financial agent of the said company, and had the general charge of the second mortgage and land grant bonds (so called) of said company, seeing to their execution and negotiation,

the sale of them and collection of the proceeds. That he was required to do and did do as such agent.

To the twelfth interrogatory. I only knew that he claimed to own any of those bonds from the books of the company. I do not know otherwise anything as to when, where, how, under what circumstances, or for what consideration Dow received said bonds, nor do I know the history of the manner in which he obtained said bonds, nor what he paid therefor.

To the thirteenth interrogatory. I did not take any active part in the proceedings connected with issuing said bonds; but I always understood that the bonds were issued and the mortgage made to raise money to build and carry on the company's railroad.

To the fourteenth interrogatory. Prentiss Dow, with Mr. Kilbourn, had the entire control of the said bonds and of their disposition. Dow had in his hands many of said bonds, but I cannot tell how many, for the purpose of negotiation and sale, in order to raise money for the company.

To the fifteenth interrogatory. Prentiss Dow did have, about the 1st of November, 1857, certain of said bonds, amounting, with land grant bonds of said company, to about $500,000, being all the bonds of those two issues in Dow's custody in New York, which he secreted from said company, and refused to deliver up or account for to said company or its officers. He refused to give any information as to the bonds or their whereabouts, and would not say why or how he had disposed of them. A committee of the board (of which I was one) was appointed to negotiate with him in regard to the matter, and had several interviews with him. He refused to give any satisfaction to the company, which was much embarrassed and injured by his action, losing its means and its credit. He was removed from the office of financial agent, but the resolution of removal was soon afterwards rescinded for fear that Dow would sell the bonds, and thus defraud the company irrecoverably. These negotiations continued between him and the company, Dow continuing his refusal to give up the bonds or to give any information concerning them, until Mr. Kilbourn and several other directors went out of office, and a new board, of which Mr. Clark was president, came in, about December, 1857. The negotiations were continued by the new board, and an arrangement was made with Dow in February, 1858, I think. I do not know what that arrangement was, but I understood that one of its conditions was that Dow was to be the fiscal agent of the company.

To the sixteenth interrogatory, he says: I have already testified in my foregoing answers what I know in regard to the bonds delivered to Chamberlain, Soutter, and Bronson. S. R. Foster, of New York city,
had $100,000 of the same second mortgage bonds, for which he
145 never paid anything. That transaction was substantially as
follows: He agreed to loan the company $165,000 from time to time, receiving a commission of 2½ per cent. out of the same, this being in September, 1857, for which he was to receive the company's note, bearing seven per cent. interest, payable 1 January, 1858. He received as collateral stock of the company 7,800 shares, I think, of the nominal value of $100 each. Then he was to have bonds of the com-

pany, so as to make the collateral securities (stock and bonds) in his hands constantly exceed the amount of the loans by ten per cent. He received accordingly as the stock fell $100,000 in these second mortgage bonds of the company, and afterwards demanded a further deposit by the company, when it was discovered that instead of the stock depreciating on his hands, as he had pretended, he had sold the same, soon after he had received it, for an amount larger by some $10,000 than he had advanced the company upon it. The company never recovered back any portion of that $100,000 of bonds, but on the contrary the new board settled with him, and allowed and delivered to him on his claim $40,000 additional of the bonds of the company, which I believe, but do not know, were part second mortgage and part land grant bonds, (so called.)

I know also that David E. Wheeler, of New York city, had some of these bonds; I don't certainly know how many, but I think to the amount of $38,000; it might have been more. He paid on them, I think, $14,015 cash, and in stock of the company $3,800. I do not know of his paying anything else for the $38,000, or for $10,000 more of the same bonds, which I now recollect he also had. There was a dispute between him and the company as to his account. He brought in a large account for services, which he wished to make an offset on the bonds. The board, or at least I, did not consider that he had rendered any services to any amount. All his services as attorney for the company would not have exceeded in value $50. He brought in a bill of some $1,700 or $1,800, I think; and was allowed at last, I think, by the board some $1,100. I have no other personal knowledge in regard to his dealings with the company.

I know that Stephen H. Alden had $100,000 of the second mortgage bonds, which he obtained, I understood, from Kilbourn and Dow. He paid in cash $20,266 91; in Selah Chamberlain's notes $39,733 09. He was paid back in cash, I understood, $10,000; so that he paid for the bonds, in all, only $50,000, or fifty cents on a dollar. I know no more about that matter. Alden had also some other bonds—$45,000 I understood—which he received on another transaction, but I don't know how many of them, if any, were second mortgage bonds; some at least were land-grant bonds, I understood.

Alfred Noxon had also, I know, $25,000 in the second mortgage bonds, for which he paid $10,000 in cash, $10,000 in stock—thus getting the bonds for eighty cents on the dollar, half cash and half in the company's stock.

These bonds were first sold in market in September, 1857,
146 and continued to be sold and disposed of by the company until in February, 1858. A large amount of them were sold at a heavy discount by the company, which received in payment cash and the company's stock. That stock was worth in October, and thenceforward to February, from sixteen cents to four cents on a dollar. I do not recollect any other matters in regard to the disposition of those bonds than what I have stated in this and my previous answers.

To the seventeenth interrogatory. Only one purchaser, Greene C. Bronson, one of the complainants, paid for his bonds entirely in stock, so far as I know. He got $15,000 in the second mortgage bonds,

for which he never paid anything but the company's stock, as I have stated, at the par value. I understood that all the purchasers of the bonds had the privilege of taking them at eighty cents on the dollar, forty cents in cash, and forty cents in the company's stock at par. I do not know of my own knowledge further than I have above testified which purchasers paid stock on their bonds, or to what extent.

To the eighteenth interrogatory. I have.

To the nineteenth interrogatory. I do not know facts in addition to what I have stated that would answer this interrogatory. In my opinion, I believe that the most of the bonds for which the company received a consideration were paid for in part at least in the stock of the company, which it received therefor at *is* par value, although it was then worth much less than that.

To the twentieth interrogatory. I do not.

MOSES KNEELAND.

Subscribed and sworn to this 21st day of January, A. D. 1861, before me. WINFIELD SMITH,
*Commissioner.*

TUESDAY, 22 *January*, 1861.

To the first cross-interrogatory. The conversation which I stated that I had with Soutter took place in his office in his bank, in New York city, in November or December, 1857, I think it must have been. Nobody else was continuously present; but persons, whom I did not know, were in and out. I had also a few days previously a similar conversation with him at the same place, at which Prentiss Dow was present, he having introduced me to Mr. Soutter. Nobody else was present that I know of when I made the demand for the bonds. The facts testified to by me in my answer to the fifth interrogatory I learned from these conversations with Soutter, and from my familiarity with the events as they transpired, owing to my connection with them as an officer of the company.

To the second cross-interrogatory. The conversation I had with Mr. Bronson, as I have stated, took place in the company's office, in the city of New York, I think, in November, 1857. There were
147 two adjoining rooms, and the conversation was held partly in each. Prentiss Dow and Mr. Richards, the transfer agent of the company, (and I think Mr. Hadley,) were there in one room or the other, but I do not know how much of the conversation they heard.

To the third cross-interrogatory. I know that Chamberlain had $200,000 of the bonds, because he and Mr. Kilbourn, and Mr. Palmer, and Mr. Hadley, told me so, and the company's books showed it, and the matter was before the board. I was told by members of the board that the had let him have the bonds to apply on the company's indebtedness to him, and he told me he had applied them on the amount allowed him for damages. I have seen the original contracts mentioned in my answer to the ninth interrogatory. My means of information as to other facts are stated in the answer, being chiefly what Chamberlain himself told me.

To the fourth cross-interrogatory. My answer to the twelfth direct interrogatory is a full answer to this cross-interrogatory.

To the fifth cross-interrogatory. I have a printed copy of the resolution, and I will attach a copy thereof to this deposition as a part hereof. The paper I now produce, signed by me, is such copy, and is marked "A."

To the sixth cross-interrogatory. The company required the said bonds detained by Dow in order to prevent any improper use being made of them, and that the company might be sure that they were safe and under its own control until the company should wish to dispose of them. It did, in fact, then desire to dispose of some of the bonds, as it needed the money very much. Dow gave as a reason for detaining them, and the only reason, that he was going to hold them to protect the bondholders, that he had been requested so to do by some of the bondholders. I do not know that the company gave or sold any of the bonds to him.

To the seventh cross-interrogatory. I have, to a great extent, stated in my answer to the sixteenth interrogatory, and in my previous answers, my means of knowledge as to the facts testified to by me. So far as I have omitted to do that, I may add that my information is derived in some degree from the books of the company, but mainly from conversations with the persons I have mentioned as having received the bonds. My position in the company necessarily made me familiar with many of the facts. I did not act as agent of the company in disposing of any of the said bonds; Mr. Kilbourn and Mr. Dow did act as such agents. I was not engaged, either directly or indirectly, in the disposal or negotiation of the said bonds. I never received, directly or indirectly, any of the said bonds.

To the eighth cross-interrogatory. My means of knowledge as to the matters I have testified to in answer to the seventeenth direct interrogatory are conversations with the persons receiving the bonds and the books of the company. I have also received corroborating and extensive information as to the same matters from Mr.
148 Dow, and from various members of the board of directors, and from other persons; but I have endeavored to answer these interrogatories independently of that hearsay information.

To the ninth cross interrogatory. I cannot state any other fact bearing upon the subject, now within my own knowledge and recollection.

To the tenth cross-interrogatory. A large amount of the land grant bonds (about $800,000 I think,) were issued to pay for iron for the road; of the first mortgage bonds on the eastern division some may have also been sold for iron. I have stated what I know as to the issuing of bonds of the second mortgage. The "corruption bonds," so called, were not issued on any division of the road, being income bonds. I do not now recollect of any other bonds issued on any division of the road, except for some consideration specified in this cross-interrogatory. I, as a director of the company, in common with the others, assented to the issue and transfer of the bonds "issued on the different divisions" of the road, except the second

mortgage bonds in question, which I think I did not directly assent to, although I may have acquiesced in such issue

MOSES KNEELAND.

Subscribed and sworn to, this 23d day of January, A. D. 1861, before me.

WINFIELD SMITH,
*Commissioner.*

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. CO,
*New York, August* 10, 1857.

The importance of completing our road this season to the junction of the western division, sixty-one miles from Portage City, by which we should not only control the coming winter's travel of the Upper Mississippi, but receive over 300,000 acres of our land grant, has decided the board of directors to place before the stock and bond holders extraordinary inducements to furnish the means necessary to accomplish this object.

The sum required to meet the engagements of the company and finish the road sixty-one miles beyond Portage City is about $400,000.

To obtain this sum, the company now offers to the holders of its stock and unsecured bonds (now so much depreciated in market) a new issue of one million of 8 per cent. bonds, payable in 1870, secured by a deed of trust to Hon. Green C. Bronson, and John T. Soutter, president of the Bank of the Republic in New York, upon the eastern division of its road from Milwaukee to Portage City, ninty-five miles, subject to a prior lien of about $13,000 per mile, and upon the line of the road from Watertown, northwest to the junction at Midland, forty miles, of which one-half is now in operation and is subject to no prior liens.

It was intended to issue this new loan exclusively to stockholders, receiving in payment four hundred dollars in the stock of this company, and four hundred dollars in cash for a bond of one
149 thousand dollars, but it has been concluded to extend a like privilege to bondholders of the *unsecured* bonds of this company which are outstanding, receiving such bonds with unpaid coupons flat upon the same terms as the stock.

The subscription will be paid as follows: one-fourth of the cash payment at the time of making the subscription; the remainder, with the stock or old bonds, to be surrendered either at the time of subscribing or on the first day of September, when the new bonds will bear date and be ready for delivery.

This will enable the holders of the bonds of the company which have no security, and are now so much depreciated, by adding a moderate amount in cash, to convert the whole into a mortgage bond bearing eight per cent. interest, amply secured against any contingency.

As only about *one-fourth* of the amount of such unsecured bonds outstanding can be received in payment for the new bonds, those desiring to avail themselves of this offer will see the necessity of an early subscription.

Annexed will be found a form of subscription, which can be filled up

and returned by mail *with* a *check* for the first installment. Any subscriptions received after the loan is taken will be returned.

Books are now open at this office.

BYRON KILBOURN, *President.*

N. B.—To meet the views of those who have stock, but would prefer to pay in bonds, it is understood that parties in this city will readily exchange bonds for stock.

Subscription to the 8 per cent. million loan of the La Crosse and Milwaukee Railroad Company to be issued in bonds at $1,000.

The undersigned, for a valuable consideration, agree to take of the La Crosse and Milwaukee Railroad Company the number of bonds set opposite our names respectively, paying therefor four hundred dollars in cash, and four hundred dollars in the unsecured bonds of said company with unpaid coupons attached, or the same amount in the stock of said company at par for each bond so subscribed.

| Name. | Residence. | No. of bonds. |
|---|---|---|
| "A." | | |

WINFIELD SMITH, *Commissioner.*

A true copy.

MOSES KNEELAND.

*Deposition of Byron Kilbourn.*

Byron Kilbourn, a witness named in the said commission, being produced, sworn, and examined, says, in answer to the several interrogatories propounded to him, as follows:

To the first interrogatory. My name is Byron Kilbourn; my
150 age is fifty-nine years; my residence, Milwaukee.

To the second interrogatory. I was a director of the La Crosse and Milwaukee Railroad Company from the organization of the company, in 1852, until January, 1858; was chief engineer from the time of organizing the company, until February or March, 1854, and superintendant from that time until February, 1856; was president of the company from February, 1856, until November or beginning of December, 1857. I held no other office in the company.

To the third interrogatory. I was "engaged in the management of the affairs" of said company, in the different capacities and official positions held by me, during the times in each, mentioned in the preceding answer.

To the fourth interrogatory. I was president of the company at the time of making the mortgage referred to in the 4th interrogatory, but was not at that time, nor at any other time during my official connection with the company, personally conversant with its "financial affairs," for the reason that I never had personal charge of the books and accounts of the company, but I had such knowledge of its "gen-

eral business'' as was necessary to the discharge of the official duties appropriately devolving on me in the several stations which at different times I occupied, as above mentioned.

To the fifth interrogatory. Touching the whole scope of this interrogatory, it is proper, in the first place, for me to say, that I did not know, or do not remember, that James T. Soutter ever purchased any of said bonds, or paid for any of them in any way; but in order to explain how he came into possession and retained some of them, it will be necessary to state the circumstances under which he became a trustee under the deed of trust by virtue of which they were issued. As president of the company, I applied Judge Greene C. Bronson, a plaintiff in this suit, to act as trustee, and stated to him that I wished him to act alone, without any associate, for the reason that the amount of bonds to be issued was small, comparatively, and that the purpose of the issue was not such as required so much formality as the larger and primary issue of land grant bonds had done, and, besides, that we wished to economise in the matter of compensation, as far as practicable, and proposed to him to act as sole trustee, for the compensation of $3,000, in the bonds of that issue, in addition to what had been previously agreed upon as compensation and salary for acting as trustee for the land grants; to all which he assented. Having made this arrangement, I went to Milwaukee to arrange with the board of directors, and perfect arrangements for the deed of trust and issue of the bonds. On my return to New York, Judge Bronson informed me that he had had some conversation with Mr. Soutter, about also having his name used as a trustee, as their names were associated in the land grant mortgage; I expressed to him my disappointment at such an arrangement, for the reason, as I explained to the judge, that
151 one trustee was sufficient, and our experience in the practical inconvenience of having more in the land grants, made it desirable to avoid it when not necessary, besides, I did not wish to pay any greater sum than I had named to him, for the entire service, and if he associated Mr. Soutter with him, he must divide the commissions with him, and not subject us to any greater expense. He remarked that there would be no difficulty about that, or words to that effect. This arrangement between Judge Bronson and Mr. Soutter placed me in too delicate a position to make any actual objection to it, and the name of Mr. Soutter was accordingly inserted. He being a trustee, it was necessary for all the bonds issued to be signed by him, and for that purpose they must of necessity be in his possession. I think it was in October, 1857, that Mr. H. L. Richards, the transfer clerk in the company's office, informed me that Mr. Soutter held some number of those bonds which he declined to deliver to him as had usually been done on being signed, stating that he held a part of them as his due for services as trustee, but the greater part as a security for some bonds which he purchased of the company on a former occasion, for friends of his, who were likely to suffer loss in consequence of their depreciation. I thought this an improper mode of procedure, and requested Mr. Prentiss Dow, then the principal bookkeeper in the company's New York office, to go to Mr. Soutter, and, by remonstrating against this action, endeavor to procure the bonds. He, however,

failed, and I then waited on Mr. Soutter for the same purpose, but with no better success; soon after this Mr. Moses Kneeland, one of our directors, being in New York, I requested him to call on Mr. Soutter with a request to send the bonds to our office, not in expectation that he would do so, but for the purpose of procuring evidence that he refused, and of the ground of his refusal, believing as I did that Mr. Dow secretly favored Mr. Soutter's act, and that he had not acted faithfully in the mission on which I sent him. I do not certainly know the amount of the bonds so withheld by Mr. Soutter, but am under the impression that it was sixty-five bonds of one thousand dollars each, of which my present belief is that he claimed ten bonds for his services as trustee, and fifty-five he retained as hostage or security, to indemnify his friends on bonds purchased a year or two previous of Mr. Atwood, as agent of the company. The company never did, so far as I am aware, consent to this retention, and he certainly never had any ground upon which to claim $10,000, or any other sum for his services; in fact, I supposed that the $3,000 which I had agreed to pay Judge Bronson was sufficient for all extra services rendered by both.

To the sixth interrogatory. So far as I now remember, the foregoing answer is all I know of the matters enquired of in the sixth interrogatory.

To the seventh interrogatory. Agreeably to my present recollection, I think that I did not personally deliver to Judge Bronson the $3,000 of bonds which by agreement he was to have for services, and whether he received them from any other officer or agent, or whether that amount or any other amount of the bonds retained by Mr.
152 Soutter were for his benefit and received by him, I am not able to state. He was justly entitled to receive $3,000 in said bonds, and I have no doubt that through some agency they were paid to him. Other than these I was cognisant of his purchasing some amount of said bonds, and was myself consulted about the transaction, but I do not remember, and am not at this time able to state, the amount nor the details connected with it without reference to the books and papers of the company, which are not now accessible to me. My belief is that the amount was $15,000, (though in this I may be in error,) and that they were paid for mostly, if not entirely, in the stock of the company. It may be that his services as trustee were applied in part payment of these bonds and that other payments of some part may have been made; but if so, I do not recollect the amount nor the particular circumstances connected with such application and payments.

To the eighth interrogatory. The foregoing is a full answer to the 8th interrogatory, and is all that I know in relation to the matters enquired about in the 7th, to the best of my recollection and belief.

To the ninth interrogatory. I do not know whether "Selah Chamberlain" now owns and holds any of said bonds secured by said second mortgage. As the remainder of the 9th interrogatory is predicated upon my answer being in the affirmative to the first part the above would be a full answer, being negative; but as the 10th interrogatory seems to anticipate a full answer to the remainder of the 9th, I will state fully in answer to it that, so far as my recollection serves me,

there was paid to Mr. Chamberlain a portion of said bonds, in part of claims held by him against the company, and my impression is that the amount so paid to him was $200,000 of said bonds, on account or in full of damages claimed by him in consequence of suspending operations under his contract on the western division of the road of said company in the fall of the year 1857. I am not able to state fully from recollection the "entire history of all negotiations, contracts, or agreements between said Chamberlain and the La Crosse & Milwaukee Railroad Company, or between said Chamberlain and any officer or agent of said company, in relation to any of said bonds claimed or held by said Chamberlain," but my general belief is that he received of the company two hundred of said bonds, as above stated, in part and not in whole of damages claimed by him in consequence of the suspension of his contract for the construction of the western division of the road.

To the tenth interrogatory. My answer to this is contained in the foregoing answer to the 9th interrogatory, except that I answer further, more deffinitely, that I am not in possession of Mr. Chamberlain's contract for the western division of the road, nor of a copy of it, on which said payment of bonds was made, nor are the same under my control.

To the eleventh interrogatory. I am acquainted with Prentiss Dow. I think he never was the "financial agent," by ap-
153 pointment of the said "La Crosse & Milwaukee Railroad Company," but was the principal bookkeeper in the company's office in New York from some time in July until October, 1857, as I now think. He was removed from this situation in October, I believe, though I am not quite certain but it was in November. My personal knowledge does not extend to his subsequent employment, though by information I understand he was employed under the administration of president Clark in the fall and winter of 1857 and 8, but in what capacity or how long I am not informed. His duties, while under my direction in the summer and fall of 1857, were to have charge of the books and papers in the office of the company at New York as the chief accounting clerk or bookkeeper. This was what he was "required to do" as his appropriate duty; but in answer to what he "did do" I should have to state that he transcended this duty by carrying away out of the office of the company a large amount of the bonds of the company—some half million dollars or more in amount—and refused to deliver them or return them upon demand being made by me for them, in consequence of which he was removed from that responsible situation.

To the twelfth interrogatory. Said Prentiss Dow purchased some of the bonds secured by said second mortgage in the fall of 1857, but "what amount he paid therefor" I am not able to state. The circumstances, when, where, and of whom, were that he had them in charge as chief clerk, and in that capacity delivered them to all subscribers and purchasers, received payments therefor, and kept the accounts of such sales and of the payments received. In this capacity he sold bonds to himself, and, so far as I am aware, paid for them agreeably to the prescribed conditions of sale, which was at the rate of 80 per cent. of the face of the bond, one-half payable in cash and

one-half in the stock or unsecured bonds of the company. Whether he did, in fact, so pay for them I am not able to state, as I did not give any personal attention to the accounts, and did not know personally what payments were, in fact, made by any persons to whom bonds were delivered, that business being entrusted to the proper accounting department under general instructions which, I presume, were duly complied with.

To the thirteenth interrogatory. "Said bonds secured by said second mortgage" were not issued to secure or pay any specific indebtedness of said company existing at the time the same were issued, but were issued to be subsequently sold by said company in the market.

To the fourteenth interrogatory. As stated in the above answer to the 12th interrogatory, Prentiss Dow had charge of the said bonds as accounting clerk in the company's office, and as such clerk had the delivery of the same to the subscribers therefor, and in that capacity the whole issue of a million dollars in amount passed through his hands, as I presume, but what amount he had in hand at any one time I am unable to say. They were prepared and signed by the
154 officers of the company in lots from time to time and sent to the trustees for signature, generally by the hand of Mr. Richards, the transfer clerk, and from thence returned to the office, when Mr. Dow had charge of them. This was the general routine, but whether this was done in every case I cannot state. The case of the bonds, however, retained by Mr. Soutter was, of course, an exception, and there may have been other exceptions not known to me.

To the fifteenth interrogatory. I do not feel certain and am not able to state whether the bonds sequestrated by Mr. Dow, as above mentioned in the above answer to the 11th interrogatory, consisted in part of the said second mortgage bonds. My impression however is, that the bonds so held and which he refused to deliver to said company consisted chiefly if not wholly of land grant bonds, there may have been some of the second mortgage bonds included. This carrying away of the bonds from the office was done when I was at Milwaukee, and I never knew with certainty of what exact kind and amount of bonds it consisted. There were no negotiations between said company and said Dow, that I am aware of, in relation to said bonds, other than a demand for their return and his removal from the position of clerk upon refusal. The bonds purchased by him had no connection with this transaction so far as I had any agency or knowledge upon the subject. After the re-organization of the company under the Albany directors, some compromise was made between the company and said Dow, by which he surrendered the bonds and returned into the service of the company, but what this compromise was, or how it was brought about, I never felt curious to know, and believe I was never particularly informed.

To the sixteenth interrogatory. A full and satisfactory answer to the several items mentioned in the 16th interrogatory cannot be given without reference to the books of the company, which I have not the means of making, but so far as I can state from memory, the following will be found to correspond with the record I presume substantially. The object and design of making the issue of a million dollars in

bonds secured by the said second mortgage was to raise four hundred thousand dollars in cash, which it was supposed would be sufficient, when added to the other resources of the company, to secure the extension of the road to La Crosse. It was proposed to offer these bonds to the stockholders at 80 per cent., payable half in cash and half in the stock or unsecured bonds of the company, by which means it was supposed 40 per cent. in cash would be realized, making the gross amount of $400,000. The great object was to raise this $400,000, and the terms in other respects were made easy in order to secure this result. Subscriptions to a considerable amount were made by stockholders upon these terms, but to what amount I have not the
155 means of showing, nor am I able to give the names of the subscribers, nor the amount by each subscribed, nor how much was paid by each, nor in the aggregate in "cash," nor how much, "in other and what other things." I am not aware that any of said bonds were fraudulently obtained or withheld from said company, or without consideration, except as before mentioned in the case of bonds withheld by Mr. Soutter and improperly carried away by Mr. Dow. I am under the impression that some amount of said bonds (I think $50,000) were hypothecated with S. R. Foster as security for a loan of money, but am not entirely clear on this subject as to the amount, nor do I know what settlement was made with him by my successor in relation to them. The transactions in regard to the sale and disposal of these bonds were so varied and multifarious, and my personal connection with the details was so slight that it would be impossible for me to attempt to give them with any pretention to accuracy. I only know the general design and what were the general instructions given, but would be entirely at a loss in an effort to relate individual transactions and details connected therewith.

To the seventeenth interrogatory. My answer to this interrogatory is contained in the foregoing answer to the 16th as fully as it is in my power to give. There never was a time, not even during the time in which these transactions were taking place, and when I was present, that I could have answered these enquiries without reference to the books of the company.

To the eighteenth interrogatory. I have stated all and everything that I know and can state in reply to the 16th and 17th interrogatories, so far as I can now remember the transactions referred to.

To the nineteenth interrogatory. I have no knowledge of any matter or thing not hereinbefore stated, tending to show that the said second mortgage should not be foreclosed to its full amount, but some of the matters which are "hereinbefore stated" might perhaps raise a doubt as to the propriety of such a proceeding. In this remark I allude to the bonds witheld by Mr. Soutter, for which the company received no consideration; and in answer to the last branch of the 19th interrogatory, I state from information and belief, but not from my own knowledge, that by reference to the books of the company it will be found that Mr. Dow did not pay in full, agreably to instructions for the bonds purchased by him.

To the twentieth interrogatory. I am not aware of anything

further within my knowledge, which I can set forth material to the subject of this examination or the matters in question in this case.

BYRON KILBOURN.

Subscribed and sworn to this 31st day of January, A. D. 1861, before me.

WINFIELD SMITH, *Commissioner.*

156 To the first cross-interrogatory. My answer to the 5th direct interrogatory is as full as I can make it, except as to the place where I had conversation with Mr. Soutter. That was at the president's office of the Bank of the Republic. I cannot state who was present; I think one or two persons were present, whom I supposed to be clerks in the bank, not known to me personally; such was generally the case when I called on him.

To the second cross-interrogatory. I think the conversation with Judge Bronson by myself, in relation to the purchase of these bonds, was at the office of the La Crosse and Milwaukee Railroad Company, in New York, in presence of P. Dow. I do not think I was present when Judge Bronson paid in the stock and took the bonds, and therefore cannot state positively that he ever did so, but have no doubt of the fact, from information in the office.

To the third cross-interrogatory. My answer to the ninth direct interrogatory is as full as I can make it from any knowledge which I have of the facts.

To the fourth cross-interrogatory. I was not currently acquainted with the transactions of Mr. Dow in taking any of the bonds of the company himself, or the time and manner in which he paid for them. I do not know anything that I can add to my answer to the twelfth direct interrogatory.

To the fifth cross-interrogatory. I have no copy of the resolution referred to.

To the sixth cross-interrogatory. The company required Mr. Dow to return the bonds to the office, which he had improperly carried away, for the reason that he had no right to their possession, and that they were required for the current financial operations of the company, which were seriously interrupted by his withdrawal of these bonds. The reason assigned by him for withholding them was, that he was advised to do so by some of the New York stockholders, and stated that they would back him in all necessary securities, if the company prosecuted him for abstracting the bonds from the office.

To the seventh cross-interrogatory. In my answer to the sixteenth direct interrogatory I have stated, as fully as I have the means of doing, the facts connected with the negotiation and sale of the bonds secured by the second mortgage made by the La Crosse and Milwaukee Railroad Company. I had a direct agency, as president of the company, in making such negotiations and sales when present at the New York office. When I was either present or absent, Mr. Dow had the active duties of delivering the bonds sold, receiving payment therefor, and keeping the accounts of the same. Mr. Kneeland was not often present, but when he was he assisted in those transactions.

I did not purchase nor receive of the company any of said bonds, directly or indirectly, either with or without a consideration, and have never known of Mr. Kneeland doing so; and with these additions I believe my answer to the sixteenth direct interrogatory is as full as I have the means of making it.

157 To the eighth cross-interrogatory. I have no means of knowing the facts referred to in the seventeenth direct interrogatory.

To the ninth cross-interrogatory. I am not aware of any facts bearing upon the subject mentioned in the ninth cross-interrogatory.

To the tenth cross-interrogatory. The divisions of the La Crosse and Milwaukee railroad embraced in the suit of Greene C. Bronson *vs.* The La Crosse and Milwaukee Railroad Company I suppose are co-extensive with the second mortgage, which I think includes the Watertown division from Watertown to its intersection with the main line east of Portage City, and also the eastern division from Milwaukee to Portage City. Agreeably to my recollection, the mortgage involved in this suit is, in fact, a first mortgage on the Watertown line, a second mortgage on the western part of the eastern division, and a third mortgage on the eastern part of the eastern division. On these latter portions there was a first mortgage for $950,000, and two second mortgages to the city of Milwaukee for the gross amount of $314,000. These, I think, are all the bonds secured on these divisions. Of these, some amount was paid to Mr. Palmer, president of the Broadway Bank, as compensation for acting as trustee, and another amount was paid to the cashier of that bank, Mr. Jno. L. Everitt, for services as transfer agent, but the amount paid to each I have not the means of stating. Also, there was paid to Messrs. Bronson and Soutter, or received by them, as I have reason to believe, and also to Mr. Knapp, some amount for services as trustees, but what amount I am not able to state. There may have been other amounts of said bonds paid to other persons for services or purposes other than those mentioned in the tenth cross-interrogatory, but if so I am not now aware of the fact.

BYRON KILBOURN.

Subscribed and sworn to this 31st day of January, A. D. 1861, before me.

WINFIELD SMITH, *Commissioner.*

THURSDAY, 24 *January*, 1861.

Dwight W. Keyes, a witness named in the said commission, being produced, sworn, and examined, says, in answer to the several interrogatories propounded to him, as follows:

*Deposition of Dwight W. Keyes.*

To the first interrogatory. My name is Dwight W. Keyes, my age is thirty years, my business is purchasing agent and paymaster for the La Crosse and Milwaukee railroad, and my residence is Milwaukee.

To the second interrogatory. I have been, since its organization, secretary and treasurer of the Milwaukee and Minnesota Railroad Company, and I am still such officers.

To the third interrogatory. I have means of knowing what was the amount of the earnings of that railroad during the period
158 mentioned. I was in the Milwaukee office of the road during all that time, being cashier for Mr. Chamberlain while he was in possession, and afterwards for Mr. Dow while he was in possession, and I had and still have free access to the books of the road, showing its business and earnings; and I have been so familiar with the business and receipts of the road, and with these books, as to be well satisfied of the correctness of the statements I shall make. I have here a tabular statement of the gross earnings, expenditures for operating the road, and net earnings of the road for each month of the period named in the interrogatory, which I have taken from the books of the road, and believe to be correct, which I now produce, marked B, and signed with my name, to be annexed hereto as part of my answer to this interrogatory.

To the fourth interrogatory. Selah Chamberlain received the earnings of the road from the first day of October, 1857, to the first day of November, 1859, and also most of the earnings for November, 1859, but there was about $19,000, I think, of the earnings of the road during November, 1859, and included in the earnings of that month in the statement I furnish, which did not come in until Mr. Chamberlain had quit possession of the road, and was not received by him.

Prentiss Dow, as agent and attorney for the trustees, under the second mortgage, (I understood,) received the earnings of the road from the first day of December, 1859, to the eleventh day of June, 1860, and also, the $19,000 above mentioned, being part of the earnings of November, 1859.

To avoid any misunderstanding of any testimony, particularly in regard to the tabular statement which I have furnished, I wish to add that the column of expenses in that statement does not include the money paid out by him (Mr. Chamberlain) during the period he was in possession, for right of way, and for interest on the mortgages on the road. The same is true as to money paid out for such purposes by Mr. Dow while he was in possession of the road.

DWIGHT W. KEYES.

Subscribed and sworn to this 24th day of January, A. D. 1861, before me.

WINFIELD SMITH, *Commissioner.*

*Earnings La Crosse and Milwaukie railroad from October* 1, 1857, *to July* 1, 1860.

| | Gross. | Expenses. | Nett. | | |
|---|---|---|---|---|---|
| 1857. | | | | | |
| October | $46,352 18 | $15,781 89 | $30,570 29 | | |
| November | 38,476 55 | 13,778 30 | 24,698 25 | | |
| December | 28,876 92 | 13,723 61 | 15,153 31 | | |
| 1858. | | | | | |
| January | 24,236 17 | 11,730 25 | 12,505 92 | | |
| February | 20,035 38 | 9,864 20 | 10,171 18 | B. | |
| March | 26,264 56 | 13,341 68 | 12,922 88 | | |
| April | 33,690 49 | 14,538 47 | 19,152 02 | | |
| May | 42,379 43 | 16,511 44 | 25,867 99 | | |
| June | 43,875 54 | 20,485 81 | 23,389 73 | | |
| July | 47,609 01 | 22,437 58 | 25,171 43 | | |
| August | 37,682 12 | 24,051 71 | 13,630 41 | | |
| September | 63,301 55 | 26,181 24 | 37,120 31 | | |
| October | 61,554 52 | 32,623 36 | 28,931 16 | | |
| November | 55,001 98 | 32,257 55 | 22,744 43 | | |
| December | 36,823 05 | 24,305 83 | 12,517 22 | | |
| 1859. | | | | | |
| January | 35,193 45 | 28,777 74 | 6,415 71 | | |
| February | 35,603 25 | 33.152 63 | 2,450 62 | | |
| March | 36,380 64 | 34,818 76 | 1,561 88 | | |
| April | 38,788 38 | 38,213 17 | 575 21 | | |
| May | 46,850 31 | 32,824 78 | 14,025 53 | | |
| June | 49,999 67 | 31,824 08 | 18,175 59 | | |
| July | 33,216 46 | 32,554 36 | 662 10 | | |
| August | 44,603 60 | 25,294 62 | 19,308 98 | | |
| September | 99,391 81 | 33,127 33 | 66,264 48 | | |
| October | 111,240 46 | 39,260 09 | 71,980 37 | | |
| November | 89,528 03 | 49,480 18 | 40,047 85 | | |
| | | | | | $556,014 65 |
| December | 44,697 50 | 28,669 82 | 16,027 68 | | |
| 1860. | | | | | |
| January | 32,883 56 | 26,251 23 | 6,632 33 | B. | |
| February | 36,669 76 | 22,192 06 | 14,477 70 | | |
| March | 44,269 15 | 29,833 50 | 14,435 65 | | |
| April | 50,532 26 | 30,755 29 | 19,776 97 | | |
| May | 69,623 47 | 44,354 83 | 25,268 64 | | |
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| July | 35,426 05 | 34,330 91 | 1,095 14 | | |

DWIGHT W. KEYES.

B. WINFIELD SMITH, *Commissioner.*

*Deposition of Dow.*

Prentis Dow, a witness named in the said commission, being produced, sworn, and examined, says, in answer to the several interrogatories propounded to him, as follows:

To the first interrogatory. My name is Prentis Dow, my age is fifty-six years, my residence is Orange, New Jersey, and I am at pres-

To the third interrogatory. I have means of knowing what was the amount of the earnings of that railroad during the period
158 mentioned. I was in the Milwaukee office of the road during all that time, being cashier for Mr. Chamberlain while he was in possession, and afterwards for Mr. Dow while he was in possession, and I had and still have free access to the books of the road, showing its business and earnings; and I have been so familiar with the business and receipts of the road, and with these books, as to be well satisfied of the correctness of the statements I shall make. I have here a tabular statement of the gross earnings, expenditures for operating the road, and net earnings of the road for each month of the period named in the interrogatory, which I have taken from the books of the road, and believe to be correct, which I now produce, marked B, and signed with my name, to be annexed hereto as part of my answer to this interrogatory.

To the fourth interrogatory. Selah Chamberlain received the earnings of the road from the first day of October, 1857, to the first day of November, 1859, and also most of the earnings for November, 1859, but there was about $19,000, I think, of the earnings of the road during November, 1859, and included in the earnings of that month in the statement I furnish, which did not come in until Mr. Chamberlain had quit possession of the road, and was not received by him.

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To avoid any misunderstanding of any testimony, particularly in regard to the tabular statement which I have furnished, I wish to add that the column of expenses in that statement does not include the money paid out by him (Mr. Chamberlain) during the period he was in possession, for right of way, and for interest on the mortgages on the road. The same is true as to money paid out for such purposes by Mr. Dow while he was in possession of the road.

DWIGHT W. KEYES.

Subscribed and sworn to this 24th day of January, A. D. 1861, before me.

WINFIELD SMITH, *Commissioner.*

*Earnings La Crosse and Milwaukie railroad from October* 1, 1857, *to July* 1, 1860.

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| 1859. | | | | | |
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B. WINFIELD SMITH, *Commissioner.*

## *Deposition of Dow.*

Prentis Dow, a witness named in the said commission, being produced, sworn, and examined, says, in answer to the several interrogatories propounded to him, as follows:

To the first interrogatory. My name is Prentis Dow, my age is fifty-six years, my residence is Orange, New Jersey, and I am at pres-

ent engaged as agent and attorney in fact for Greene C. Bronson and James T. Soutter, trustees, in the foreclosure of the second mortgage of the La Crosse & Milwaukee Railroad.

To the second interrogatory. I was transfer agent of the La Crosse & Milwaukee Railroad Company in New York from about the
160 15th day of July, 1857, until about the 1st day of October, 1857. I was also appointed agent of that company for the settlement of claims some time in the winter of 1857–8, and held the appointment until some time in March, 1858. I held no other appointment or office under that company, so far as I remember. In December, 1856, I purchased ten shares of the capital stock of the company through a broker, and held the same, I think, until October, 1857. I also subscribed for and received from the company, some time in February or March, 1857, fifty shares of what was called "privileged stock, issued in connection with the five thousand dollars of the land grant bonds, (so called,) which I had previously subscribed and paid for. I think I also purchased, in the month of October, 1857, twenty shares of the capital stock of said company, which was sold by my son, I think in December, 1857. I purchased five shares of the stock of the company in the spring of 1858, which I now hold. I think these are all the parcels or shares of stock I ever owned in that company.

To the third interrogatory. I have been the holder of second mortgage bonds of the La Crosse & Milwaukee Railroad Company, having received thirteen of such bonds in September and October, 1857, from said company in New York, for the consideration of eleven thousand four hundred dollars paid to the company in other bonds of the company, theretofore issued, in the capital stock of the said company, and in cash, the particulars being set forth in my answer to the 12th interrogatory. These bonds were all long ago sold at the current market value to various parties in open market, and I have no longer any interest in any of them. I have also bought and sold many of said bonds in open market, buying for cash, or with notes of the purchasers, with the bonds as collateral to them, at the current market price, and I have sold in the same manner and upon like terms. The purchases have generally been made through brokers in the city of New York, and I have no means of knowing the names of the parties from whom they come, as brokers rarely disclose the names of the sellers or owners. The price paid, and which was, so far as I know, the current market price, varied at different times from thirty per centum to fifty-six per centum of the par value of the bonds.

My bonds of every kind have, for the last two years, been and are now in the hands and under the control of my son in New York, who has full authority to buy, sell, pledge, or otherwise dispose of any or all of them, which authority he has exercised at his discretion, and I am not able to state and have no information whether I now hold any, or how many, of said second mortgage bonds. I have learned from my son I had on the first day of January, 1861, eighteen of said 2d mortgage bonds. I do not know the names of the sellers of any of the bonds which I have bought, as stated above. I have always paid in cash or my notes for bonds so bought. I cannot state the aggregate amount of bonds I have held.

To the fourth interrogatory. I know something of the disposition of some of the bonds in question. So far as I know of the dis-
161 position of them by the company, they were disposed of in the city of New York, during the months of August, September, October, November, and December, 1857, and under the following circumstances: The president and secretary of the company represented that the sum of four hundred thousand dollars was required to complete the railroad then building by the contractor from Portage City to Tomah, (about 61 miles,) and to pay all arrearages due the contractor. They also represented, that by completing so much of the road, the company would receive a large amount of the land granted to aid in its construction. An appeal was made by a circular, of which a copy is attached, marked A 2, (and hereto annexed as part of this answer,) by the president to stock and bondholders to furnish this sum upon second mortgage bonds, to be issued at eighty per cent., payment to be made half in cash and half in the stock of the company, or the unsecured bonds of the company, at the option of the subscribers to the bonds. Subscriptions were made for these bonds to the amount, in all, so near as I can now remember, (having no books or other memoranda at my command,) of about five hundred thousand dollars. As nearly as I can now now recollect, there was paid in upon these subscriptions, in cash, about one hundred and sixty-five thousand dollars, and forty-five thousand dollars in the notes of the contractor, stated by Mr. Kilbourn to be the same as cash in paying the contractor. I do not know nor can I state the precise amount of stock of the company received upon these subscriptions, nor the precise amount of the other bonds of the company so received by the company. One hundred of said second mortgage bonds were paid to one S. R. Foster, of New York, upon a claim by him of deficiency of security for loans he had made the company upon pledge of its capital stock. Fifteen of said bonds were paid to Greene C. Bronson, one of the complainants, upon a claim by him of a large sum for legal services, he at the same time transferring one hundred and fifty shares of the stock of said company to the president of the company. Ten of said bonds were sold to Alfred Noxon at, I think, forty-seven and a half per cent. of their par value, paid for, partly in cash and partly in reduction of the notes of the company. Two hundred of said bonds were paid or sent to Selah Chamberlain, the contractor. I do not know of any of said bonds being fraudulently obtained or withheld from said company, or taken or withheld without consideration. A part of this detail is from my own knowledge, and a part from information, derived from the clerks in the transfer office under my supervision, or from the officers of the company.

I recollect that Stephen H. Alden as one of the takers of second mortgage bonds. He subscribed for one hundred (a part of the five hundred mentioned) of said bonds. He paid for the same by four notes of Selah Chamberlain, the contractor, amounting to forty thousand dollars, referred to above by me. He also paid in cash twenty thousand dollars or a little over that sum, enough to make
162 up the amount of interest on the notes not then at maturity. The notes had been given to him by Chamberlain, and were

by Alden endorsed to the company; the two payments, with the allowance for interest, being $60,000. At the same time Mr. Kilbourn, president, gave Alden a check for ten thousand dollars, which I understood was a discount or allowance, reducing the price of the bonds to fifty per cent. of their par value. The other subscribers paid generally according to the terms of the subscription.

To the fifth interrogatory. I am unable to state more definitely than I have in reply to the last interrogatory, as I have no books or records to refresh my memory.

To the sixth interrogatory. I have stated as fully as I am able, without other means to refresh my memory.

To the seventh interrogatory. I had no special agency for the La Crosse and Milwaukee Railroad Company in regard to the disposition of said bonds. As transfer agent, the care of the transfers of stock was with me, and I had duplicate keys of the safe in which the bonds were deposited as they came into the office from the hands of the trustees, by whom they were registered or countersigned. Generally one or two hundred bonds at a time were in the office. The bonds were sometimes delivered by H. L. Richards, sometimes by Robert K. Dow, and some were delivered by myself. Those which I delivered to any one were delivered under verbal instructions of the president of the company at New York, but I have no recollection as to the precise times delivery made by me. The disposition of the bonds, so far as I can state, is set forth in my reply to the fourth interrogatory. I may have held two or even three hundred of these bonds in the safe of which I had the keys as transfer agent, and delivered them, or allowed their delivery by the clerks, to subscribers upon the consideration set forth in their subscriptions, and for the purpose of complying with the terms of the same. The bonds remaining not delivered, as above stated, were by me handed to Stephen Clark, president of the company, in November, 1857.

To the eighth interrogatory. There were kept in the office of the company in New York stock ledgers and other books for recording the transfers of the stock of the company, and also a bond register, with the numbers set forth of several kinds of bonds, against which numbers were generally entered the names of the parties to whom the bonds were delivered; a daily cash book, in which were intended to be entered the receipts and payments of each; a journal and ledger, in which the transactions and results were entered and posted. In these four last-named books the disposition of the bonds and receipts therefor were or should have been entered. I was the keeper of these books and the stock ledgers only to the extent of making an occasional entry, the books being really *kept*, that is, the writing and entries made, by the clerks in the office. These books are not in my control, nor do I know where either or any of them are. I kept no
163 books showing the disposition of the bonds, except as herein set forth. I made some memoranda from these books showing the disposition of the bonds for the legislative investigating committee of Wisconsin in 1858, but I do not know what has become of them. I have no others.

To the ninth interrogatory. The entries set out in this interrogatory

I do not recognize or recollect as a transcript of any entries made by me in any book of the La Crosse and Milwaukee Railroad Company, or any other.

To the tenth interrogatory. I recognize in the statements contained in the ninth interrogatory several items as being entries which might truthfully and properly have been made by me, namely: on the credit side, cash, $242 77; cash, $200; cash, $300; cash, $157 18; cash, $100; cash, $150; also on the credit side, 10 shares stock, 1,000; 1 bond, 1,000; 1 8 pr. ct. bond, 1,000; sundries, 5,250; 4 shares stock, 400; 4 S. & S. bonds, 4,000; dis., 2,600; paid porter B'k Republic, 5; B. K. Dow, 75. And on the debit side I recognize six entries which in like manner may have been made by the clerks from actual transactions, namely: cash, 242 77; cash, 157 18; 3 bonds, 3,000; 1 S. & S bond, 1,000; 11 bonds, 11,000. I recognize no other item in the statement shown me than those above mentioned, nor do I know to what the other items refer.

To the eleventh interrogatory. The entries on the debit side of said statement of account are correct as to thirteen of said second mortgage bonds, fourteen being charged and one credited on the credit side.

To the interrogatory numbered eleven and a half. To the best of my recollection the item of "sundries" was made up of five land grant bonds of $1,000 each, and fifty shares of the "privileged stock," so called, issued with and accompanying said land grant bonds. These fifty shares had five dollars per share paid upon them, making the sum of $5,250; and if I am right, then these items should be charged on the books as follows:

| | |
|---|---|
| To land grant bond account | $5,000 |
| " privileged stock account | 250 |

To the twelfth interrogatory. I received two of said second mortgage bonds from the company in September, 1857, and eleven
164 in the latter part of October, 1857. I paid to the company for the thirteen bonds eleven thousand four hundred dollars in the following manner:

| | |
|---|---|
| In cash | $750 |
| In the capital stock of the company, fourteen shares of one hundred dollars each | 1,400 |
| In the stock of the company known as "privileged stock," issued with the land grant bonds | 250 |
| In the bonds of the company theretofore issued for the purchase of the St. Croix & Lake Superior Railroad | 4,000 |
| And in the "land grant bonds," so called | 5,000 |

The land grant bonds were numbered 1, 2, 3, 5, and 6, and were the first three and the fifth and sixth bonds of that kind issued by the company. I paid for them cash to the company in part prior to their issue, and the remainder in cash when delivered in February, 1857. These bonds and the fifty shares of "privileged stock" were subscribed for by me, I think, in December, 1856, or January, 1857, under the representation of the president of the company by a printed circular, dated Nov. 5, 1856, in which circular it was represented that the lands donated to the company were worth thirteen millions

six hundred and fifteen thousand dollars; that these lands were among the most valuable in the western country, and that instead of falling below their value, would beyond doubt greatly exceed the above estimate. It was also stated in said circular, as a further inducement to myself and others to subscribe for and purchase said land grant bonds, that the trustees who were to register said bonds "would be clothed with full power to control all funds obtained on sales of the bonds, and also with full power to control all disbursements, through proper agencies, so far as to have always the assurance that all such disbursements are properly applied to the purposes intended and none others." Ten shares of the capital stock transferred to the company were purchased by me in the open market, in December, 1856, at the price of eighty-one dollars and twenty-five cents per share, upon the personal assurance of B. Kilbourn, president of said company, as well as the representations in said circular, that the dividends would not be less than ten per cent. per annum, and would be likely to reach twenty per cent. per annum when the road should be completed.

The four bonds of the company known as the St. Croix & Lake Superior Railroad bonds were purchased by me in open market in the month of July, 1857, under the representation by Mr. Kilbourn, the president of the company, that the "St. Croix and Lake Superior Railroad Company," under its new organization, became responsible for the same, and would provide for an exchange by the issue of its first mortgage bonds. The same representation was afterwards renewed in a printed statement of the affairs of the company and progress of the work, dated July 23rd, 1857.

When Mr. Kilbourn returned to New York from Milwaukee,
165 about the first of October, 1857, and stated that the company had confessed or agreed to confess a judgment to be issued against it in favor of Selah Chamberlain for over six hundred thousand dollars, and had leased the road for an indefinite period to pay said judgment, I claimed payment for the stock and bonds I had purchased and received from the company, as before stated, on the ground that the representations were false and the money I had paid the company was obtained by false pretences. Mr. Kilbourn said I should be protected as far as possible by any other bonds or securities at the command of the company, and authorized me to exchange the bonds and stock for second mortgage bonds at not less than eighty per cent. for the latter, he being the president of the company and exercising full power in such matters. He returned to Milwaukee soon after, and from here wrote me, renewing the authority verbally given to me in New York.

The five land grant bonds were placed with the other land grant bonds of the company and delivered to Stephen Clark, president of the company, in November, 1857, I having been restrained by an injunction from the supreme court of the State of New York from parting with any of said bonds during the intermediate period.

The four bonds, called "St Croix & Lake Superior Railroad bonds," of the La Crosse and Milwaukee Railroad Company were also delivered to said Clark for the company, taken by him to Milwaukee with

other bonds which had been paid by the company in New York, and cancelled at the office by the officer of the company.

The money was paid by me into bank in New York to the credit and for the use of the company, and was used by the company. The certificates of stock were surrendered to H. L. Richards, the clerk and transfer agent in New York, and the stock of both kinds were transferred by me upon the books of the company in New York, to Byron Kilbourn, president.

To the thirteenth interrogatory. I have stated, in reply to the last interrogatory, the payment of a portion in stock, and further answer to this interrogatory, that I held one certificate for ten shares of stock which I purchased through a broker, in December, 1856, for which I paid eight hundred and twelve dollars and fifty cents. I cannot say from whom this stock was purchased, as the name of the seller was not disclosed by the broker. I held the certificates at the time in my own name, and transferred the ten shares directly to Byron Kilbourn, president of the company, surrendering the certificate to be cancelled to H. L. Richards, transfer clerk.

The four shares were subsequently paid to the company, and were, I think, part of a certificate of twenty shares, which certificate was surrendered to H. L. Richards, then the transfer agent in New York, four shares being transferred to Byron Kilbourn, president of the company, and a new certificate made to me for sixteen shares.

166 My recollection is not distinct as to this last certificate made for me. In like manner, the certificate of fifty shares of "privileged stock" was held by me. It was issued to me by the company, as an accompaniment or privilege pertaining to the land grant bonds, I think, in March, 1857, upon the payment by me to the company of $250. This certificate was in like manner surrendered to the transfer agent, H. L. Richards, and the stock transferred on the books of the company to Byron Kilbourn, president.

To the fourteenth interrogatory. I think I did not make the entry, as I did not keep the books. I think such an entry was made, and I have answered this as fully as I can in my replies to interrogatories eleven and a half and twelve, and I can give no further answer, except that no part of said item was for services, although the company was then indebted to me, and still owes me, about $1,000 on that account.

To the fifteenth interrogatory. I refer to my answer to the interrogatories numbered eleven and a half, twelve, and thirteen, and I have no further information and can give no further answer.

To the sixteenth interrogatory. I know D. E. Wheeler, of New York. He was a subscriber for a considerable number of said second mortgage bonds. I do not know of his buying any from any other person. He subscribed for said bonds at sundry times, and for some of them, I think, as the agent of other parties. So far as I remember, he paid for the bonds in cash, stock, and other bonds of the company, on the same terms as other subscribers, and upon the same considerations. I know nothing of any contracts, agreements, or negotiations between said Wheeler and the company about said bonds. Whatever contracts, negotiations, or agreements were made, so far as I ever heard of any, were made by Byron Kilbourn, the president, or Wil-

liam Dawes, the general financial agent of the La Crosse and Milwaukee Railroad Company, and said Wheeler. The cash and other things paid by Wheeler were paid to myself, as transfer agent, or to some of the clerks in the office. I do not know personally of any agreement in relation to the purchase, retention, possession, delivery, or safe keeping of any of said bonds with said Wheeler. I have no present recollection of the amounts or several modes of payment made at the different times by him.

To the seventeenth interrogatory. I have, so far as I can recollect.

To the eighteenth interrogatory. I made entries in the cash book, or ordered them made, when any cash was taken for second mortgage bonds, or on the payment of any other thing taken for the same, and I have no doubt full entries were made by the clerks in the office of the accounts between said Wheeler and the company in relation to said second mortgage bonds, but I do not know where the original entries now are, nor can I state whether the statement set forth in this interrogatory is a transcript therefrom. I did not myself
167 make entries of which this statement is a transcript.

To the nineteenth interrogatory. I do not recognize any of the entries as set forth in said statement as made by me; nor do I recollect anything of the entries on the credit side of the account set forth in the sums $18,700, or $2,450, or $1,100; nor do I know what items or things constituted said amounts. I think the word "dis., &c," in the account means "discount, &c.," but not knowing for a certainty, cannot say to what account it is credited on the books of the company.

To the twentieth interrogatory. Greene C. Bronson received from the La Crosse and Milwaukee Railroad Company fifteen of the second mortgage bonds in New York, some time in September, 1857. They were delivered to him by Byron Kilbourn, president of said company, in my presence. The circumstances and the consideration, as I understood the same from Mr. Kilbourn and from Mr. Bronson, were substantially as follows: Mr. Kilbourn had induced Bronson to purchase one hundred and fifty shares of the stock of the company during the winter of 1856–7, at about eighty cents on a dollar, with an agreement or promise on the part of the company to refund the amount at any time and take the stock. I also understood, from conversation between Mr. Kilbourn and Mr. Bronson, that a large sum was due to Bronson from the company for legal advice and services, which the company had not paid. Mr. Kilbourn delivered or directed the clerk to deliver the fifteen bonds. At the same time Bronson transferred the one hundred and fifty shares of stock to B. Kilbourn, president, and his certificate of the same was surrendered and cancelled. I know nothing more than I have stated, as to from whom, or at what price, or upon what consideration he had received the stock; nor whether the same had been subscribed for by any person, or what person; nor whether the amount of said stock, or any, or what part thereof had ever been paid to the company for the stock. I only know that the certificate was regular in form, and purported to have been issued before I had anything to do with the office.

To the twenty-first interrogatory. I do not know that any stock

received for second mortgage bonds was issued by the railroad company without consideration.

I never, while transfer agent of said railroad company, nor at any other time, issued any certificates of stock of said company to any person or persons, except upon the surrender of like certificates of stock to the same amount, for cancellation. I had no authority to issue certificates of stock for money, or for any other thing, at par or at any other price less than par, or above par, or for any other consideration whatever, except upon the surrender for cancellation, as before stated, of certificates for an equal number of shares with those embraced in the certificates issued.

168 To the twenty-second interrogatory. I knew S. R. Foster, of New York, now deceased, and know of transactions between him and the La Crosse & Milwaukee Railroad Company in relation to second mortgage bonds. Foster was a subscriber for fifty of said bonds, and paid for the same forty per cent. in cash, and, I think, forty per cent. in bonds of the La Crosse & Milwaukee Railroad Company, called or known as the St. Croix & Lake Superior railroad bonds. Said Foster loaned the said La Crosse & Milwaukee Railroad Company, as nearly as I can remember, about ninety thousand dollars, upon the pledge of three hundred thousand dollars of the stock of the company, and also some $75,000 upon the pledge of another large amount of stock—I think $300,000 or more. Some time afterwards Foster claimed that his security was insufficient, and Mr. Kilbourn gave him one hundred of those second mortgage bonds as additional security.

To the twenty-third interrogatory. I have stated all I know about the loan, and the pledge of stock as security, and the amounts, in my reply to the last interrogatory. I do not know that Foster had disposed of the stock so pledged to him prior to the receipt of the $100,000 bonds by him. He had transferred upon the books of the company in New York all that stock to other parties, and had, I suppose, absolutely sold the same. I do not know and cannot state the price of said stock obtained by said Foster, and had no statements or admissions from him on the subject of his bonds or stocks except his statement that he had sold all his bonds. I was informed that subsequently the company settled this loan account with him by giving him, in addition, forty thousand dollars in land grant bonds in full for his claims for deficiency.

To the twenty-fourth interrogatory. I think the statement a correct transcript of the account of the company with said Foster as to the fifty bonds for which he subscribed, but, as before stated, I did not personally make the entries. I think the letters "S. & C. & S. bds." $10,000, mean "St. Croix & Lake Superior bonds," a class of securities issued by the La Crosse & Milwaukee Railroad Company.

To the twenty-fifth interrogatory. I am confident that Foster paid the several sums specified in the interrogatory, amounting to twenty thousand dollars, in bank notes, to myself as transfer agent, and that I sent the same by express to the company's office at Milwaukee, or part to the company and part to S. Chamberlain, the contractor, on account of his work.

I have now stated all that I know as to the bonds purchased by Foster or the payments therefor made by him.

PRENTIS DOW.

Subscribed and sworn to this 31st day of January, A. D. 1861, before me.

WINFIELD SMITH,
*Commissioner.*

169 "A 2"

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
*New York, August* 10, 1857.

The importance of completing our road this season to the junction of the western division, sixty-one miles from Portage City, by which we shall not only control the coming winter's travel of the Upper Mississippi, but receive over 300,000 acres of our land grant, has decided the board of directors to place before the stock and bond holders extraordinary inducements to furnish the means necessary to accomplish this object.

The sum required to meet the engagements of the company and finish the road sixty-one miles beyond Portage City is about $400,000.

To obtain this sum the company now offers to the holders of its stock and unsecured bonds (now so much depreciated in market) a new issue of one million of 8 per cent. bonds, payable in 1870, secured by a deed of trust to Hon. Greene C. Bronson and John T. Soutter, president of the Bank of the Republic, in New York, upon the eastern division of its road, from Milwaukee to Portage City, ninety-five miles, subject to a prior lien of about $13,000 per mile, and upon the line of road from Watertown northwest to the junction at Midland, forty miles, of which one half is now in operation, and is subject to no prior liens.

It was intended to issue this new loan exclusively to stockholders, receiving in payment four hundred dollars in the stock of this company and four hundred dollars in cash for a bond of one thousand dollars; but it has been concluded to extend a like privilege to bondholders of the *unsecured* bonds of this company, which are outstanding, receiving such bonds with unpaid coupons flat upon the same terms as the stock.

The subscriptions will be payable as follows: One-fourth of the cash payment at the time of making the subscription; the remainder, with the stock or old bonds, to be surrendered either at the time of subscribing or on the first day of September, when the new bonds will bear date and be ready for delivery.

This will enable the holders of the bonds of the company—which have no security, and are now so much depreciated—by adding a moderate amount in cash, to convert the whole into a mortgage bond, being eight per cent. interest, amply secured against any contingency.

As only about *one-fourth* of the amount of such unsecured bonds outstanding can be received in payment for the new bonds, those de-

siring to avail themselves of this offer will see the necessity of an *early* subscription.

Annexed will be found a form of subscription, which can be filled up and returned by mail, *with a check* for the first installment. Any subscriptions received after the loan is taken will be returned.

Books are now open at this office.

BYRON KILBOURN,
*President.*

N. B.—To meet the views of those who have stock, but would prefer to pay in bonds, it is understood that parties in this city will readily exchange bonds for stock.

170 *Subscription to the* 8 *per cent. million loan of the La Crosse and Milwaukee Railroad Company, to be issued in bonds of* $1,000 *each.*

The undersigned, for a valuable consideration, agree to take of the La Crosse and Milwaukee Railroad Company the number of bonds set opposite our names, respectively, paying therefor four hundred dollars in cash, and four hundred dollars in the unsecured bonds of said company, with unpaid coupons attached, or the same amount in the stock of said company, at par, for each bond so subscribed.

| Names. | Residence. | No. of bonds. |
|---|---|---|
| | | |

A 2.

WINFIELD SMITH,
*Commissioner.*

*Deposition of Jackson Hadley.*

Jackson Hadley, being a witness named in the said commission, produced, sworn, and examined, says, in answer to the several interrogatories propounded to him, as follows:

To the first interrogatory. My name is Jackson Hadley; my age, forty-five years; my residence, Milwaukee; and my occupation, a dealer in produce and real estate.

To the second interrogatory. I was secretary of the La Crosse and Milwaukee Railroad Company from about the 20th day of April, 1857, to the 1st day of May, 1858; also a director during the same time. I held no other office in the company at any time.

To the third interrogatory. Yes, one million dollars in such bonds were executed by the company, for the purpose of being sold to raise money to carry on the operations of the company, and some of the issue was sold to the subscribers for them, all of whose names I can-

not recollect without the books of the company to refer to. The bonds subscribed for were to be paid for at the rate of eighty per cent. of their par value, payable 40 per cent. in cash, and 40 per cent. in the stock and unsecured obligations of the company; some bonds were hypothecated for money borrowed, some delivered to Selah Chamberlain, some exchanged with Green C. Bronson for stock, some withheld from the company by James T. Soutter, and some retained by Prentis Dow. Stephen H. Alden subscribed for and received one hundred of said bonds, for which he paid about $20,000 in money, and Chamberlain's notes for about $40,000; and subsequently there was refunded to him, as I understood at the time, and now believe, $10,000 in a draft on Atwood & Co., thus reducing the amount which
171 he paid for his hundred bonds to $50,000. Henry Vallette, David Dows, Atwood & Co., Wm. Dawes, E. C. Halliday, Alfred Noxon, and H. L. Richards were subscribers for said bonds, but I cannot recollect the number for which each subscribed, or the manner and amount which each paid for the bonds he received. There were many other subscribers for less amounts, but I cannot recall their names or the amounts of their respective subscriptions, without the books of the company to refer to, much less the manner and amounts in which the respective payments were made. The books of the company, in which the subscriptions for the bonds were made and a record of the payments and deliveries was kept, are better evidence than I can give from recollection, and I therefore refer the inquiry to them.

To the fourth interrogatory. Two hundred of said bonds were delivered to Selah Chamberlain, and he allowed the company at the time therefor one hundred thousand dollars to apply on his claim against the company for $200,000 for damages for the suspension of his contract to construct the western division of the road.

Fifteen of said bonds were delivered by Prentis Dow to Green C. Bronson, one of the complainants, in exchange for 150 shares of stock of the company.

Sixty-five of the bonds were retained by James T. Soutter, one of the complainants, under these circumstances: All the issue was made in bonds of $1,000 each, and delivered to Mr. Soutter and Judge Bronson for their signatures as trustees. They signed them, and returned portions of them from time to time to the office of the company in New York city, until all were returned except sixty-five, which sixty-five bonds Mr. Soutter refused to return or deliver to the company, alleging that he retained ten of them for services of himself and Judge Bronson as trustees, and fifty-five of them to secure the payment of certain unsecured bonds of the company, which he claimed that he had purchased some time previously for certain friends of his, who were, as he said, liable to be large losers by reason of the depreciation in the value of such unsecured bonds so purchased by him, and that he was determined to hold these fifty-five bonds for their benefit. Prentis Dow was the chief clerk or financial agent of the company in New York city at the time, and in that capacity negotiated for subscriptions for said bonds, delivered the bonds to the respective subscribers, and received the pay for the same. How many bonds Mr. Dow, as clerk or agent of the company, sold to Prentiss Dow, or in

what manner or what amount Prentis Dow paid for them, I am not informed other than what is shown by the account kept by himself; and not having access to that account, I am unable to recollect the exact number of said bonds which Prentis Dow received, or whether he ever paid for any.

If I recollect correctly, D. E. Wheeler received forty-eight of
172 said bonds, either for himself, or for himself and Mr. Palmer, of the Broadway bank. I think Mr. Wheeler subscribed for these bonds under the arrangement to pay 40 per cent. in money, and 40 per cent. in stock or unsecured bonds; but without the books to refer to I cannot state how much he paid in cash, and how much in some other way.

Some time in the forepart of September, 1857, one hundred of the bonds, with 7,800 shares of stock previously delivered, were hypothecated with S. R. Foster, as collateral security for about $160,000 in the aggregate, loaned by him to the company from time to time; and I think he also subscribed for forty or fifty of the bonds, to be paid for, 40 per cent. in cash, and 40 per cent. in stock or unsecured bonds. Whether Mr. Foster settled and paid for the bonds for which he subscribed or not I cannot recollect, nor do I recollect that the parties named in this interrogatory ever made any other payments for the bonds they respectively received than as herein stated. At the time of the delivery of the bonds, and the receipt of stock in payment for them, the stock was selling in New York city at twenty-seven cents when the first of the bonds were delivered, and from that price down to five cents at the time the last deliveries were made, as I now recollect.

To the fifth interrogatory. I do not recollect what was the amount, or about the amount of the unsecured indebtedness of the company at the time of the execution of the mortgage referred to, but I do know that that indebtedness was considerable in amount. The mortgage was dated September 1st, 1857; and I recollect that the stock was selling at that time for twenty-seven cents, and downward to five cents within sixty days thereafter.

To the sixth interrogatory. I have no knowledge of any stock being issued at the time referred to, other than such as had been regularly subscribed and paid for, except such as had been issued and hypothecated for money borrowed by the company. The amount of stock hypothecated was as follows: 1,500 shares with Alfred Noxon, on which, with $60,000 of other securities, he loaned the company $48,106 75; 1,500 shares with Stephen H. Alden, on which he loaned the company $50,000; and 7,800 shares with S. R. Foster, as stated. Whether any of the stock so hypothecated was returned to the company in payment for these bonds I do not know.

To the seventh interrogatory. I do not recollect the amount of stock, or about the amount of stock issued by the company prior to the execution of the said mortgage, or in what the payments were made for the stock issued up to that time. The books of the company will show, or at least they did show, the last time I saw them, and they are therefore better evidence than I can give without them to refer to.

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Some time in the forepart of September, 1857, one hundred of the bonds, with 7,800 shares of stock previously delivered, were hypothecated with S. R. Foster, as collateral security for about $160,000 in the aggregate, loaned by him to the company from time to time; and I think he also subscribed for forty or fifty of the bonds, to be paid for, 40 per cent. in cash, and 40 per cent. in stock or unsecured bonds. Whether Mr. Foster settled and paid for the bonds for which he subscribed or not I cannot recollect, nor do I recollect that the parties named in this interrogatory ever made any other payments for the bonds they respectively received than as herein stated. At the time of the delivery of the bonds, and the receipt of stock in payment for them, the stock was selling in New York city at twenty-seven cents when the first of the bonds were delivered, and from that price down to five cents at the time the last deliveries were made, as I now recollect.

To the fifth interrogatory. I do not recollect what was the amount, or about the amount of the unsecured indebtedness of the company at the time of the execution of the mortgage referred to, but I do know that that indebtedness was considerable in amount. The mortgage was dated September 1st, 1857; and I recollect that the stock was selling at that time for twenty-seven cents, and downward to five cents within sixty days thereafter.

To the sixth interrogatory. I have no knowledge of any stock being issued at the time referred to, other than such as had been regularly subscribed and paid for, except such as had been issued and hypothecated for money borrowed by the company. The amount of stock hypothecated was as follows: 1,500 shares with Alfred Noxon, on which, with $60,000 of other securities, he loaned the company $48,106 75; 1,500 shares with Stephen H. Alden, on which he loaned the company $50,000; and 7,800 shares with S. R. Foster, as stated. Whether any of the stock so hypothecated was returned to the company in payment for these bonds I do not know.

To the seventh interrogatory. I do not recollect the amount of stock, or about the amount of stock issued by the company prior to the execution of the said mortgage, or in what the payments were made for the stock issued up to that time. The books of the company will show, or at least they did show, the last time I saw them, and they are therefore better evidence than I can give without them to refer to.

To the eighth interrogatory. I cannot answer this interrogatory further or more fully than I have in my answer to the seventh interrogatory.

173 To the ninth interrogatory. Without the books of the company to refer to, I cannot answer the ninth interrogatory, as I do not recollect the amount of money received by the company for the million of second mortgage bonds; but I believe, and according to my best recollection now, the amount of money received for them was about two hundred thousand dollars. The value of the stock was as stated in my former answers. I do not know what was the value of the unsecured bonds received in payment for the second mortgage bonds, nor do I know what amount of stock or other things was received by the company for these bonds.

J. HADLEY.

Subscribed and sworn to this 1st day of February, A. D. 1861, before me.

WINFIELD SMITH,
*Commissioner.*

To the first cross-interrogatory. My means of knowledge as to things testified to in my answer to the 3d direct interrogatory were such as I derived from the books and records of the company, and from what I heard Greene C. Bronson and James T. Soutter say in conversation in my presence in relation to the bonds which they received, and from conversations at sundry times which I heard at the office of the company in New York city. I do not recollect who was present on every occasion, Mr. H. L. Richards and young Mr. Colt were generally present in the office with Mr. Dow. Mr. Soutter was in his office at the Bank of the Republic when I heard him speak of the reason why he refused to give up the sixty-five bonds which he retained, and Mr. Bronson was in the office of the company in New York city when he spoke of the bonds that he received. I do not recollect who was present at either time.

To the second cross-interrogatory. It was, and is such as I derived from the books and records of the company, and from statements and remarks made in my presence by the respective persons named in this interrogatory, as to the number of said bonds which they respectively received or subscribed for.

To the third cross-interrogatory. Considerable indebtedness was incurred by the company from time to time for discounts, interest, and commissions, iron, duties, insurances, freight, services, wood, and materials to operate the road, and for consolidations, and connections with other roads and companies, but I cannot state the amount; I must refer the inquiry to the books and records of the company, as I do not remember the items and amounts.

To the fourth interrogatory. I cannot state what amount of such indebtedness was incurred when I was a member of the board of directors; it was constantly changing from payments being made, and new similar liabilities being almost daily incurred in the transaction of the business of the company. Whether the stock which was hy-

pothecated, as stated in my answer to the 6th direct interrogatory, was all issued while I was a member of the board of directors or not,
174 or whether some portion of it was issued before I was a member of that board or not, I do not remember. In December, 1857, and in January, 1858, the Albany or eastern directors, then constituting a majority of the board of directors, and composing the executive committee, or a majority of it, by resolution did cause to be executed and sold $2,500,000 dollars in unsecured convertible bonds of the company, bearing two per cent. interest per annum, interest payable semi-annually; these bonds were to be converted into stock at the option of the holder thereof; these bonds were ostensibly sold by a committee of the Albany directors, and, if I recollect correctly, at ten cents on the dollar, as accounted to the company; they were immediately converted into stock in the New York or Albany office, and the stock sold at the brokers' board in New York city in daily amounts as the market would bear, at from eleven to fourteen cents. 25,000 shares of stock was issued to Stephen Clark, president, to retire these 2,500,000 dollars of two per cent. convertible bonds, other than the stock hypothecated, as stated in my answer to the 6th direct interrogatory, and these 25,000 shares to Stephen Clark, president. I do not know that any amount of stock was issued by the board of directors, except such as had been regularly subscribed and paid for under the charter; except by resolution of the board of directors, some stock was issued to take up or retire such unsecured construction bonds as the holders thereof desired to convert into stock, but I do not remember what amount was so issued; the books of the company will show, or did at the time alluded to, and I refer the inquiry to them for the definite amounts; I do not remember the names of the parties with whom such exchanges were made.

To the fifth cross-interrogatory. Such as I derived from the books and papers in the office of the company, and from conversations and statements which I heard in the office of the company in relation to its business affairs.

To the sixth cross-interrogatory. Some time in April, 1858, I received five land grant bonds at something over their market value in settlement of a balance of account due me from the company for services as secretary, and for expenditures incurred for the company. Other than this, I never received from the company any stock, bonds, or other securities.

J. HADLEY.

Subscribed and sworn to this 1st day of February, A. D. 1861, before me.

WINFIELD SMITH, *Commissioner.*

*Certificate.*

DISTRICT OF WISCONSIN, *ss:*

I certify that, in pursuance and by virtue of the commission issued to me, hereto attached and returned herewith, I caused to appear before me the several witnesses therein named, and I have examined

them on oath upon the interrogatories addressed to them, respectively, being the same annexed to said commission and herewith returned; that I have taken such examination and reduced the same to writing, and I herewith return the same, being found in the foregoing
175 sheets, under my seal annexed to the said commission. And I further certify that each of said witnesses was by me sworn, before such examination, to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories which should be propounded to him in the cause entitled in the said commission. That I thereupon propounded to each witness, on his separate examination, the interrogatories addressed to him, and the answers given to each, respectively, appear above. That after the said answers were reduced to writing, I read to each of said witnesses the answer by him made to the said several interrogatories, and the same were by him then sworn to and subscribed in my presence The several papers, marked, respectively, A, B, and A 2, are the same referred to in the answers to which they are attached.

In testimony whereof, I have hereto set my hand and seal this first day of February, eighteen hundred and sixty-one.

WINFIELD SMITH, [SEAL]
*Commissioner.*

United States district court, district of Wisconsin.

JAMES T. SOUTTER and GREEN C. BRONSON
*against*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

Be it remembered that on this 8th day of February, 1861, came before me, D. L. Deyo, a notary public duly appointed, qualified under the laws of the State of Wisconsin, James S. Brown and M. H. Carpenter, in the above entitled cause, and requested me to take the deposition of Edward H. Broadhead, William Jervis, and John Catlin, to be used in the trial of the above entitled cause now pending in the district court of the United States for the district of Wisconsin; and thereupon, by consent of the said solicitors, I proceeded to take the depositions of the said witnesses as follows, to wit:

*Deposition of E. H. Brodhead.*

Edward H. Broadhead, a witness produced, sworn, and examined in the above entitled cause, says as follows:

I reside in Milwaukee; I am fifty-one years of age; I am acquainted Prentis Dowe; I have known him during the time he has been in the city of Milwaukee, and presume during the time he was in possession of La Crosse railroad. I do not know the precise time, I think about a year ago this time, at the Newhall House, in this city, I had a conversation with Mr. Dowe about increasing the revenue of the La Crosse road. Mr. Catlin and Mr. Jervis, I think, were present.

Question. Will you relate that conversation?

176 Objected to by the complainants. First, because any conversation with Mr. Dowe is irrelevant and immaterial. Sec-

ondly, because if designed to affect Mr. Dowe personally, it is incompetent, because he is a witness called by the defendant. Third, because they did not question him with regard to the same conversation.

Ans. The conversation arose in discussing a question of a contract between the Milwaukee and Mississippi and La Crosse Railroad Companies. I was urging upon Mr. Dow the importance of the contract to the La Crosse Railroad Company, because it would reduce their expenses, and enable the two companies to charge a larger price for doing the business, and thus increase the income or revenue of the road. Mr. Dow's reply to this was, that he did not know that it was for his interest, or the interest of the parties that he represented, to show an increase of business. This is the substance of the conversation. I think this conversation was in the month of February, 1860. It might have been the latter part of February or first of March.

*Cross-examination.*

There was a contract finally made between the companies some time after this. We were some time discussing the terms of the contract. The contract was in writing. This conversation was some time before the contract. The object of the contract was to do away with competition, reduce the expenses, and enable the two roads to charge higher prices. There had been considerable controversy between the two roads, each charging the other with reducing the prices. I don't understand as there was any personal ill feeling, but we thought that the La Crosse road had reduced the prices, when they had agreed to keep it up. The object of reducing prices was to obtain business. The effect of the La Crosse road reducing the prices was to take the business from us, or compel the Mil. and Miss. to make a similar reduction. In the conversation referred to, there was a discussion on every occasion about the relative benefit to each roads; that was, in fact, the object of the contract. We contended that there was a mutuality of interest in this matter between the two parties in this contract. We were at a loss to know the reason for the opposition to our proposition for a contract met with, as it was all fair between the companies, until the remark of Mr. Dow's.

The above last answer was objected to by complainants, as not being responsive to the question, and irrelevant.

Quest. Did not Mr. Dow contend that *that* the La Crosse road had advantages which would be sacrificed by the proposed contract?

Ans. He did say so; and we answered that we yielded advantages on our part which we considered as an equivalent.

The latter part of the last *question* objected to as not responsive to the question.

Quest. Was one item in the proposed contract that the prices charged by the two roads for freight and passengers above La Crosse should be the same, and that the two roads should share equally
177 the results of the business above McGregor?

Ans. It was so.

Quest. Do you recollect about the time when Col. Crocker was appointed receiver of the La Crosse railroad?

Ans. I do recollect about the time.

Quest. Did Col. Crocker, after he was appointed receiver, act upon or carry out that agreement? (Objected to by def't.)

Ans. He did not.

Quest. Did you make a like effort to effect an agreement with Col. Crocker to secure harmony of action between the two roads and prevent competition? (Objected to by def'ts.)

Ans. Yes, we did; and he referred us on all occasions to Mr. Goodrich.

Quest. Did that competition and reduction of prices preceed to a greater extent between the two roads after Col. Crocker was receiver than ever before?

Ans. I think it did not. I had a very little to do after that with the affairs.

Quest. Do you not know that some time in the month of September last freights to points on the Mississippi were cut down in consequence of competition between the two roads to about one-half?

Ans. It was not in consequence of the competition between the two roads, but in consequence of boats on the river, as I understand it. The competition was very severe on the river between the boats, and for a time freights were taken by the boats from Prairie du Chien free of charge; the Milwaukee and Mississippi road, at the same time, charging and receiving its full price.

Quest. Was the freight tariff between Milwaukee and Prairie du Chien reduced on the Mississippi road?

Ans. I am not able to say whether it was or not.

Quest. Was a circular issued from the office of the Milwaukee and Mississippi Railroad Company about the first of October last proposing to take freight from Milwaukee to St. Paul for 33 cents pr. one hundred pounds?

Ans. I can't say whether there was such a circular or not; there were several circulars issued, but I cannot speak of any particular one; but the idea was, whatever the price was, to keep up the price on the road, and let the fight go on between the boats.

Quest. If you don't know that such a circular was issued, how do you know the idea prompting its issue?

Question objected to because immaterial and metaphysical.

Ans. I do not know as I have stated the idea that prompted the issue; I did not mean to say anything about that circular.

Quest. Did not the Milwaukee and Mississppi road, on certain classes of freight, charge as high as 45 cents per 100 pounds to Prairie du Chien?

178 Ans. The details of the prices I do not know anything about. The general idea was to keep up the prices on the road and let the boats fight it out.

Quest. Did not you, and others connected with the Mil. and Miss. R. R. road, express the greatest dissatisfaction with Col. Crocker for not entering into a contract with you? (Objected to by def'ts attorney as immaterial.)

Ans. I did, myself, express great surprise at it, as well as great dissatisfaction. Mr. Crocker had been one of the principal advocates of the arrangement, but when he got into the interest of the La Crosse road he changed his ground.

Quest. Was it when Col. Crocker was a director of the Mil. and Miss. road that he was favorable to the arrangement?

Ans. Yes.

Quest. Was it after he became receiver of the La Crosse road that he changed his mind?

Ans. For some considerable time after Mr. Crocker was appointed receiver he claimed to me that he was in favor of the arrangement, but finally took ground against it; at all events, he did not make the arrangement.

Quest. Has the policy of the La Crosse road, since the appointment of the receiver, remained substantially the same as before?

Ans. Yes.

Quest. Who signed that contract on behalf of the La Crosse road.

Ans. It was signed by Mr. Chamberlain, or Mr. Goodrich, his agent.

Quest. How long prior to the execution of the contract had you been running the roads in competition with each other, without having such contract?

Ans. I suppose there was more or less competition since the La Crosse road was open, down to the present time, during the summer season.

Quest. How long did the conversation with Mr. Dowe continue?

Ans. Can't say. We were meeting each other frequently in the streets.

Quest. Who has been the substantial superintendent of the La Crosse road, so far as the freight and running of the trains are concerned, for the last two years?

Ans. Mr. E. H. Goodrich is the person.

*Direct examination resumed by def't.*

Quest. At the time of this conversation with Dow, did he represent himself as having authority to make a contract relating to the business on the La Crosse railroad?

Ans. I don't know as he represented himself in that capacity, but he led us to understand that any arrangement of that kind would be carried out.

Quest. About how long after the appointment of Mr. Crocker as receiver did he pretend to be in favor of this contract?

179 Ans. I should think it was a couple of months that he represented that Mr. Goodrich was the man in the way of carrying it out; and stated that it was his intention to remove Mr. Goodrich as soon as he could find a competent person to take his place, and wished me to assist *me* in doing so.

Quest. Do you know whether Mr. Dow, since the appointment of receiver, had or pretended to have any connection with or control over the management of business on the La Crosse railroad?

Ans. I do not know that he has.

Quest. If two railroads like the La Crosse and Mississippi engaged in competition, and cut down the prices until they both carry for nothing, which profits most by it?

Ans. The one that does least.

Quest. If they both charge a fair price for passengers and freight, which profits the most?

Ans. The one that does most.

*Cross-ex. resumed.*

Quest. Where two roads with equal means carry unequal distances for the same but losing prices, which will be first exhausted—the one that carries the greatest, or the one that carries the shortest distance?

Ans. The distance alone does not determine the expense of transportation. There are not conditions in the question sufficient to enable me to answer.

Quest. What did Mr. Dow say at that conversation which gave you the impression that he had power to make such an agreement?

Ans. In the first place, Mr. Dow was the principal negotiator in the matter, and the man we talked the most with about the contract. He showed us several letters from Mr. Chamberlain, from which we came to that conclusion, that he was a man to negotiate with.

Quest. Did Mr. Dow declare himself opposed to any arrangements on the part of the La Crosse road, or did he claim more favorable terms than you were disposed to grant?

Ans. I supposed Mr. Dow was in favor of the contract until he made the remark stated in the first part of my testimony.

(Objected to by complainants as not responsive to the question.)

I answer, that during our discussions Mr. Dow expressed doubts as to the propriety of such a contract as we were proposing to make, and also objected to the terms of some portions of the conditions of the contract.

Quest. Do you say that Mr. Dow did not express a desire for terms more favorable to the La Crosse company?

Ans. The discussion was about the terms of the contract. We both differed as to the terms which each of us asked.

Quest. Have you any further answer to make to the last question?

180 Ans. I have not.

EDWARD H. BRODHEAD.

*Deposition of William Jervis.*

William Jervis, a witness produced, sworn, and examined in the above entitled cause, says as follows:

I reside in Milwaukee; I am about forty-seven years of age; I was present at several conversations between Mr. Broadhead and Mr. Dow, at the Newhall House, in the city of Milwaukee, about the month of February, 1860. The whole negotiation extended through about two months.

Quest. Relate any conversation on the part of Prentis Dow in relation to his desire to have the revenue of the La Crosse road increased or diminished?

(Objected to by the complainants: 1st. Because it is entirely immaterial what Mr. Dow did say. 2d. If designed to affect Mr. Dow personally, he was the witness of the defendants. 3d. Because Mr. Dow had not been questioned with regard to this conversation.)

I know Prentis Dow; I heard conversations between him, Mess. Broadhead and Mr. Catlin at the Newhall House, about a year ago.

Ans. Negotiation was started on part of the Mississippi company, Mess. Broadhead, Catlin, and myself. It was commenced about the month of January, 1860. The point to be gained in the negotiation was a mutual understanding to get more favorable prices than we had been getting, to avoid paying commissions for getting business, and to reduce the expenses of outside agencies and to increase of the business. I was present at most of the conversations between the agents of the two companies. Mr. Dow was generally present. It was urged on the part of the Mil. & Miss Co. that a negotiation resulting in a contract between the two companies would very materially increase the net profits of the business. This negotiation was going on for some weeks, until a remark was made by Mr. Dow, in answer to a remark made in relation to the advantages of the proposition of the Mil. & Miss. Co., that it might not be for his or their interest to increase the net results, or make a good show, or something of that kind. After this, my impression is the negotiation dropped off for a time. It was afterwards taken up and consummated about the month of March, 1860.

*Cross-examination.*

Quest. Who first spoke to you about being a witness in this case?

Ans. An entire stranger to me. The next day after I was first spoken to, Mr. Broadhead came to my office and asked me what I recollected about the negotiations. The only other man was Mr. Meyer, who came in and asked what that man wanted.

Quest. Did you recollect this remark of Mr. Dow before Mr.
181 Broadhead suggested it to you, or did Mr. Broadhead first suggest the remark?

Ans. I recollected the remark, and told Mr. Broadhead of it before Mr. Broadhead said anything about it except to inquire.

Quest. Have you been present at any consultation at Mr. Finch's office in regard to this 3d mortgage?

Ans. No.

Quest. Mr. Jervis, about how long was it between the first interview with Mr. Dowe about the proposed contract until the contract was finally signed?

Ans. My impression is, it was commenced in January and closed in March.

Quest About what time, then, was this conversation in which Mr. Dow made this remark?

Ans. I think in February.

Quest. Had Mr. Dow and yourself and others been discussing what the terms of such a contract should be?

Ans. My impression is, that the first negotiations were to satisfy the La Crosse people who were there of the importance of making the contracts. No details were talked about.

(The complainants object to the above *question* as not being responsive to the *question*.)

Quest. Will you state whether, at that particular conversation in

which Mr. Dow made this remark, you had been discussing the terms of the proposed contract?

Ans. I can't tell *the positively* whether the details were discussed or not, but my impression is, that it was the general plan of sticking the business of the two roads to the Mississippi river, which was the main feature of the contract.

Quest. Did Mr. Dow contend that the proposition was too favorable or not favorable enough to the La Crosse road?

Ans. I think Mr. Dow, and Mr. Goodrich I know, contended that they had advantages for this business above La Crosse.

Quest. Will you now answer whether Mr. Dow *contend* that the proposition was too favorable or not favorable enough to the La Crosse road?

Ans. I think Mr. Dow did not object to the general proposition.

Quest. Will you now state whether Mr. Dowe contended that the proposition was too favorable or not favorable enough to the La Crosse road?

Ans. He did not object to the general proposition—the details were not discussed. I don't think he objected, but that he was in favor of the general proposition.

Quest. Then why did you not make the contract?

Ans. Mr. Dowe said he was not authorized to make a contract. He claimed that Mr. Goodrich would not consent.

Quest. Was this at the same conversation you alluded to at
182 your direct examination?

Ans. I can't tell; Mr Dow had all along appeared to favor the proposition, and manifested a desire to do something about the contract, and had said, at various times, that Mr. Goodrich was opposed to make the contract.

Quest. Who were present at this conversation between Mr. Dow and yourself?

Ans. I can't tell who were present.

Quest. During these interviews did Mr. Dow insist upon terms in favor of the La Crosse road which the Mil. and Miss. road were unwilling to give?

Ans. I don't think he did *one*.

WILLIAM JERVIS.

*Deposition of John Catlin.*

John Catlin, a witness produced, sworn, and examined, in the above entitled cause, testifies as follows:

I reside in the city of Milwaukee, and am fifty-seven years old.

Quest. Were you present with Mr. Brodhead and Mr. Jervis at the Newhall House at an interview with Mr. Dow, spoken of by Mr. Broadhead and Mr. Jervis?

Ans. I was.

Quest. What was the object of that interview?

Ans. It was to see if we could agree upon a contract to dispense with competition between the two roads, and lessen the expenses of the two roads, and dispensing with agents, and running fewer trains.

Quest. Had there been negotiations to that end prior to that nterview?

Ans. There had been a great deal of talk upon the subject before that time; the particular object of meeting that objection then was in behalf of the La Crosse road to making the contract.

Quest. Were the negotiations interrupted that night, or where they continued immediately thereafter?

Ans. They were broken off and resumed after Mr. Chamberlain came to Milwaukee.

Quest. Why were they broken off that night?

(Objected to by complainants' attorney as immaterial.)

Ans. Mr. Broadhead left immediately after Mr. Dowe made the remark which has been spoken of, that he did not know as it would be to their interest to increase the earnings of the road.

Quest. When were the negotiations again resumed?

Ans. About a month after, I should think, I met Mr. Chamberlain in the street before the Newhall House, and asked him why he objected to making a contract when we were ready to concede everything that they could reasonably claim.

Quest. Were the negotiations interrupted that night you have spoken of, in consequence of the remark ot Mr. Dow which you have mentioned?

183 (Objected to as both immaterial and leading.)

Ans. I can't state positively the reason why Mr. Broadhead left, but he made some discoveries then, to which he took exceptions, and had some words with Mr. Goodrich, or Mr. Dow, and took his hat and left. Mr. Jervis and myself both remained and talked with Mr. Dowe.

Quest. Did not Mr. Broadhead, immediately after this remark of Mr. Dowe, say that that explained the opposition to the contract, and that it was useless to talk more about it?

(Objected to as leading and immaterial.)

Ans. I think he did say something of the kind—that if they were opposed to increasing the receipts it was useless to try to make the contract.

*Cross-ex.*

Quest. Had Mr. Dow ever objected to making the contract, either in that or any prior conversation?

Ans. I think he did not. He had pretended to be in favor of making the contract, and Mr. Goodrich was the man who made the objections.

Quest. Did you ever tell Mr. Carpenter, or any one else, that Mr. Broadhead made the remark that you have above testified to in reference to the remark of Mr. Dow?

Ans. No, sir.

Quest. Who first asked you to be a witness in this case?

Ans. Mr. Fleming first came to me, and asked me if I heard Mr. Dow make the remark spoken of here. He was the only person who talked with me on the subject of being a witness. Mr. Meyer was present when Mr. Fleming came in, and was present at the conversation.

Quest. Were you present, in New York, at a conversation in which Mr. Finch and others were present, in which it was agreed, either for

an effort to have Col. Crocker appointed receiver to the La Crosse road, or to oppose the foreclosure of this second mortgage, or by means of any other organization to get control of the La Crosse road?

Ans. No, I never was.

Quest. Were you present at a conversation of that kind, when Finch was present, anywhere?

Ans. During the time the application for Mr. Crocker's appointment was pending, I heard Mr. Finch and Mr. Broadhead talk about it, but I had nothing to do with it. I don't think of any one else being present. There might have been.

Quest. Since that time, have you been present at any conversation in Mr. Finch's office, in which opposition to the foreclosure of this second mortgage was discussed?

184 Ans. I was present in Mr. Finch's office two or three days ago, when Mr. Hubbell and Mr. Finch were in conversation about the foreclosures, either of the 2d or third mortgage. They were discussing a brief.

Quest. Have either you, personally, received stock or bonds in the Milwaukee and Minnesota Railroad Company, or any promise of such stock or bonds to influence in the resistance of the foreclosure of the 2d mortgage, or has any one else received them to your knowledge?

Ans. I have not, and don't know of any one else who has. I have never been approached on the subject.

Quest. When was that contract finally made between Chamberlain and the company?

Ans. I think, in the month of March, or first of April, 1860. There was no one present. Mr. Goodrich had agreed upon a contract, and took it from our office to have a copy made, and sent back a copy signed by Chamberlain, and I returned our one, signed by myself. It might have been a week or so after Goodrich and I made the contract that it was signed.

Quest. Can you recollect the words used by Mr. Dow at that conversation.?

Ans. I can't swear to the words.

*Direct resumed.*

Quest. Can you give the substance of what was said by Mr. Dow?

Ans. He said that he did not know whether it was to his or their interest that the earnings should be increased.

Quest. Was this remark in reply to any remark or proposition by any one else? And if any, what was it?

(Objected to as immaterial and leading.)

Ans. I can't state the particular remark that called it out. Mr. Dow and Broadhead were talking.

*Cross resumed.*

Quest. I understand you to say that you and Mr. Goodrich finally agree upon a contract; that Mr. Goodrich took the draft to be copied; that within a short time, not exceeding probably a week, Mr. Goodrich sent back the contract with Mr. Chamberlain's signature, and that you signed a copy and sent it back to Mr. Goodrich. Am I right in this understanding, or am I wrong? If wrong, please state wherein.

Ans. I think you are right; but I may be mistaken. This transaction might relate to the packet contract.

Quest. When was this packet contract between the companies concluded?

Ans. In the forepart of April, 1860.

JOHN CATLIN.

185 UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

I, D. L. Deyo, a notary public, duly appointed a notary public under and by virtue of the laws of the State of Wisconsin, do hereby certify that on the eighth day of February, A. D. 1861, the said parties, by counsel, and the said witnesses attended before me, at my office, in the city of Milwaukee; and the said witnesses being of sound mind and lawful age, and having been by me first carefully cautioned and examined, and sworn to testify the truth, the whole truth, and nothing but the truth, the said depositions were by me reduced to writing in presence of said witnesses severally, and from their statements, and having been by me carefully read to the said witnesses severally, were subscribed by the said witnesses in my presence.

In witness whereof, I have hereunto subscribed my name, at the city of Milwaukee, in said district, the eighth day of February, A. D. 1861.

D. L. DEYO, *Notary Public,*
*Milwaukee County, State of Wisconsin.*

Fees, $10 75.

*Deposition of James B. Cross.*

U. S. dist. court, dist. of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPARD KNAPP, *trustee,*
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN, *et als.*
} In equity.

Deposition of James B. Cross, a witness produced and examined on the part of the defendant, Selah Chamberlain, who, being first duly sworn, answered and said:

I purchased a judgment recovered by Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, the principal amount of which was about one hundred and eleven thousand dollars. I made the purchase about the 2d of March, 1859. The defendant, Selah Chamberlain, is the equitable owner of that judgment. I hold it as collateral security for obligations which I hold against him. The judgment referred to was rendered in the United States district court for the district of Wisconsin on or about the 3d day of October, 1857.

J. B. CROSS.

DISTRICT OF WISCONSIN:

I certify that the foregoing deposition was taken by consent of the counsel for the parties on the 8th day of January, 1861, at the office

of Cary & Pratt, solicitors for the complainants, in the city of Milwaukee, in said district; Mr. Emmons, of counsel for the defendant, Chamberlain, appearing for him, and Mr. Cary, of counsel for
186 complainants, appearing in their behalf. That said witness was first duly sworn by me, as a commissioner in and for said district court, to tell the truth, the whole truth, and nothing but the truth, so far as he should be interrogated in said cause. That his deposition, so taken on oath, was reduced to writing by me, and after being first carefully read over to said witness, was by him subscribed in my presence.

WALTER S. CARTER,
*U. S. Com'r, Dist. of Wis.*

Dist. court U. S., dist. of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE R. R'D COMPANY.

It is hereby stipulated that the within is a true copy of a deposition taken as it therein purports, and that said copy be read in evidence on the part of the defendant, Chamberlain, with the same force and effect as if the same was an original deposition of the same tenor duly taken in the above entitled cause. February 7, 1861.

MAT. H. CARPENTER,
*For Graham & Scott, and M. & M. R. R. Co.*
LEVI HUBBELL,
*Sol'r for S. Howard and Jno. S. Rockwell.*
JAMES S. BROWN, *Of Counsel for Comp'ts.*
EMMONS, VAN DYKE & HAMILTON,
*Sol'rs for Selah Chamberlain and Mil., Wat. & Baraboo Valley Railroad Company.*

*Depositions taken by R. E. Stillwell, N. Y.*

UNITED STATES OF AMERICA,
*Southern district of New York,*
*City, County, and State of New York, ss:*

Be it remembered that on this twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stilwell, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York,

in the State aforesaid, Nehemiah P. Stanton, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined, in the
187 district court of the United States for the district of Wisconsin, wherein Greene C. Bronson and James T. Soutter are plaintiffs, and the La Crosse and Milwaukee Railroad Company, and others, are defendants.

*Deposition of N. P. Stanton.*

And the said Nehemiah P. Stanton, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Nehemiah P. Stanton, and he did thereupon depose, testify, and say as follows, viz:

My name is Nehemiah P. Stanton; am 37 years of age; reside in the State of New Jersey, and am engaged in the banking business.

Q. Were you ever, and when any, and what officer of the La Crosse and Milwaukee Railroad Company, one of the defendants in this cause?

A. I was elected by the board of directors the fore part of August, 1858, as president of the company, and re-elected at the annual election, the May following, and remained as acting president until the sale of the road by the trustee of the third mortgage bonds, in May, 1859.

Q. Do you know anything, and what, about the disposition by the La Crosse and Milwaukee Railroad Company of the bonds secured by what is called the second mortgage on the eastern division of said company's railroad?

A. At the time I was elected the retiring president, Stephen Clark, placed in my hands as president, I think, fifty-three bonds, and an order on Prentiss Dow, or on his son, D. K. Dow, for twelve more, which I afterwards disposed of as directed by the board of directors of the company, by paying its debts, and appropriating the proceeds of those sold for the same purpose.

Q. Did the said company keep a book, stating the persons to whom and the considerations upon which said bonds were sold or delivered, or any book relating to the disposition of said bonds? If so, state fully what book, how, and by whom it was kept, and what it contained, and where it now is.

A. They did keep such a book, stating the persons to whom, and the consideration upon which said bonds were sold or delivered. It was a thin book, leather bound, and ruled in leger form, and kept in leger style, I should think, though I do not remember of it having the appearance of being posted or copied from any other book. I am not positive, however. I think it was kept by Prentiss Dow, and in his handwriting, who, I think, was transfer agent of the company at that time. The book was, I should think, about 12 inches broad by 18 inches long. I don't remember of its containing any other

entries except the account of the disposition of the second mortgage bonds, and I don't know where the book now is.

Q. Did you ever, and when, make out or examine, after it had been made out, a copy of that book, and certify to it as correct?

188 A. I think some time in the winter of 1859 I examined a copy purporting to be a copy of said book, and found it to be correct by comparing it with the book itself, and so certified to its correctness.

Q. Did you examine when in Milwaukee last, and when was it, a paper purporting to be a copy of that copy? If yea, state where that paper now is, and whether it is a true copy of the copy certified by you, and whether it is a true copy of the original book.

A. While in Milwaukee, I think in August last, I examined a paper purporting to be a copy of a certified copy of the disposition of the said second mortgage bonds, but I do not know where said copy so examined now is, but suppose it to be attached to the testimony taken at that time before, I think, a Mr. Carter. The copy that I examined as aforesaid, in August last, I have no doubt was a true copy of the copy certified by me, which certified copy is a true copy of the original book.

Q. Where is that original book, and when and where did you see it last?

A. I do not know where the book is. I suppose it is in the possession of the Milwaukee and Minnesota Railroad Company. I do not remember seeing it since I examined it and compared it with the copy certified by me, which was in the winter of 1859, in the office of William Barnes, trustee, in the city of Albany.

Q. Look at the paper shown you, marked Ex. A, and say whether it is a correct transcript of the original book before referred to. State whether you recognize any of the entries on the said paper as correctly copied from said book, and state whether said paper is a copy of the original book.

A. I recognize the entry of S. H. Alden's account. I remember the number of bonds, and I remember the entry and amounts of cash, notes, and discount received for them. I remember the name of Henry Vallette; also the name of J. D. De Graff; also of Greene C. Bronson, the amount of bonds sold to him, and the stock entry to his credit, being in full for the bonds; also J. T. Soutter. I recognize the number of bonds and the amount to his debit, and also that there is nothing placed to his credit; also Prentiss Dow's account; I recognize the number of bonds to his debit, and some of the credit items; I recognize S. R. Foster's collateral; I also recognize the name of S. Chamberlain, and the number of bonds to his debit; also Stephen Clark; also Alfred Noxon's name; also D. E. Wheeler's name; also Artemus Fish and S. R. Foster; and judging from all these entries, I have no doubt that the paper I now hold and hereto annex, marked Exhibit A, is a true copy of the copy certified by me to be a true copy of the original book.

N. P. STANTON.

189 Sworn to before me this 22d January, 1861.

R. E. STILWELL, *U. S. Com'r.*

EXHIBIT A.—*R. E. Stillwell, U. S. Com'r.*

S. H. ALDEN, p. 72.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. | 100 bonds, 1 to 100..... | 100,000 00 | 1857. Aug. 10 | By cash..... | 20,266 91 |
| | | | " 20 | notes..... | 39,733 09 |
| | | | No. 17 | dis..... | 40,000 00 |
| | | | | | 100,000 00 |

JONATHAN ROWE, p. 99.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. | 1 bond, 101..... | 1,000 00 | 1857. Aug. 29 | By cash..... | 400 00 |
| | | | Sep. 1 | " 4 sh. stock..... | 400 00 |
| | | | Dec. 18 | " dis..... | 200 00 |
| | | | | | 1,000 00 |

WILLIAM A. DAVIS, p. 85.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 1 | 12 bonds, 102 to 113..... | 12,000 00 | 1857. Aug. 20 | By cash..... | 1,200 00 |
| | | | Sep. 1 | " " ..... | 3,600 00 |
| | | | " 1 | " 48 shs. stock ..... | 4,800 00 |
| | | | Dec. 18 | dis..... | 2,400 00 |
| | | | | | 12,000 00 |

HENRY STAATS, p. 91.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. | 4 bonds, 114 to 117 | 4,000 00 | 1857. Aug. 25 | By cash | 400 00 |
| | | | Sep. 1 | " " | 1,200 00 |
| | | | " 1 | " 16 shs. stock | 1,600 00 |
| | | | Dec. 18 | " dis | 800 00 |
| | | | | | 4,000 00 |

ULYSES COLE, p. 78.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. | 2 bonds, 118 and 119 | 2,000 00 | 1857. Aug. 14 | By cash | 200 00 |
| | | | Sep. 1 | " " | 600 00 |
| | | | " 1 | " 8 shs. stock | 800 00 |
| | | | Nov. 17 | " dis | 400 00 |
| | | | | | 2,000 00 |

B. F. POTTER, p. 57.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 1 | 2 bonds, 120 and 121 | 2,000 00 | 1857. Aug. 14 | By cash | 200 00 |
| | | | " 15 | " " | 200 00 |
| | | | Sep. 1 | " " | 400 00 |
| | | | " 1 | " 8 shs. stock | 800 00 |
| | | | Nov. 17 | " dis | 400 00 |
| | | | | | 2,000 00 |

W. H. Putnam, p. 105.

| | | | | | | |
|---|---|---|---|---|---|---|
| Sep. 12 | 1 bond, No. 358 | 1,000 00 | 1857. Sep. 4 | By cash | | 400 00 |
| | | | " 12 | " 4 shs. stock | | 400 00 |
| | | | Dec. 18 | " dis | | 200 00 |
| | | | | | | 1,000 00 |

190 Henry Vallette, p. 84.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. Sep. 12 | 10 bonds, 333 to 342 | 10,000 00 | 1857. Aug. 19 | By cash | | 1,000 00 |
| | | | Sep. 10 | " " | | 3,000 00 |
| | | | Nov. 6 | " bonds | | 4,000 00 |
| | | | Dec. 18 | " dis | | 2,000 00 |
| | | | | | | 10,000 00 |

G. Halsey, p. 54.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. Sep. 12 | 1 bond, No. 329 | 1,000 00 | 1857. Aug. 3 | By cash | | 100 00 |
| | | | " 15 | " " | | 100 00 |
| | | | " 31 | " " | | 200 00 |
| | | | Sep. 1 | " 4 shs. stock | | 400 00 |
| | | | Dec. 18 | " dis | | 200 00 |
| | | | | | | 1,000 00 |

JOHN KNOWER, p. 117.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 12 | 5 bonds, 394 to 398..... | 5,000 00 | Sep. 4 | By 2 S. & S. bonds..... | 2,000 00 |
| | | | 1858. | | |
| | | | Feb'y 19 | Transf'd to S. Clark..... | 2,000 00 |
| | | | " 19 | Dis..... | 1,000 00 |
| | | | | | 5,000 00 |

J. D. DE GRAFF, p. 112.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 12 | 3 bonds, 330 to 332..... | 3,000 00 | Sep. 8 | By cash..... | 1,200 00 |
| | 2 " 627 to 628..... | 2,000 00 | " 8 | " 20 shs. stock ..... | 2,000 00 |
| | | | Oct. 23 | " cash..... | 800 00 |
| | | | Dec. 18 | " dis ..... | 1,000 00 |
| | | 5,000 00 | | | 5,000 00 |

ROBERT MCMULLER, p. 109.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 12 | 2 bonds, 327 and 328 ..... | 2,000 00 | Sep. 6 | By 8 shs. stock ..... | 800 00 |
| | | | " 5 | " cash..... | 800 00 |
| | | | Dec. 18 | " dis ..... | 400 00 |
| | | | | | 2,000 00 |

DAVID DOWS, p. 76.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 1 | 25 bonds, 261 to 285..... | 25,000 00 | Aug. 12 | By cash..... | | 2,500 00 |
| | | | " 31 | " " ..... | | 7,500 00 |
| | | | Sep. 1 | " 10 bonds ..... | | 10,000 00 |
| | | | Nov. 17 | " dis ..... | | 5,000 00 |
| | | | | | | 25,000 00 |

JOHN WARREN & SON for REV'D GEO. MORRIS, p. 82.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 1 | 5 bonds, 286 to 290..... | 5,000 00 | Aug. 15 | By cash..... | | 500 00 |
| | | | " 31 | " " ..... | | 1,500 00 |
| | | | Sep. 1 | " 20 shs. stock..... | | 2,000 00 |
| | | | Dec. 15 | " dis ..... | | 1,000 00 |
| | | | | | | 5,000 00 |

191

S. BUEL, p. 53.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Aug. 4 | To dis. on ch'k ..... | 3 00 | Aug. 1 | By cash..... | | 1,200 00 |
| | 12 bonds, 127 to 138..... | 12,000 00 | Sep. 1 | " " ..... | | 3,600 00 |
| | | | 2 | " " ..... | | 3 00 |
| | | | 1 | " 48 shs. stock ..... | | 4,800 00 |
| | | | Nov. 17 | " dis ..... | | 2,400 00 |
| | | 12,003 00 | | | | 12,003 00 |

ATWOOD & Co., p. 107.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 12 | 25 bonds, 369 to 393..... | 25,000 00 | 1857. Aug. 12 | By cash..... | 10,000 00 |
| | | | Sep. 1 | S. & C. & S. bonds .... ..... | 10,000 00 |
| | | | Dec. 18 | Dis..... ..... | 5,000 00 |
| | | | | | 25,000 00 |

G. C. BRONSON, p. —.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 10 | 15 bonds, 343 to 357..... | 15,000 00 | 1857. Sep. 10 | Stock..... ..... | 15,000 00 |

J. S. EVERETT, p. 113.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 12 | 3 bonds, 361 to 363..... | 3,000 00 | 1857. Aug. 11 | By 20 shs. stock..... | 2,000 00 |
| | | | " 11 | " cash..... | 400 00 |
| | | | Dec. 18 | " dis ..... | 600 00 |
| | | | | | 3,000 00 |

L. Chichester, p. 119.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 19 | 2 bonds, 406 and 407 ..... | 2,000 00 | Sep. 16 | By cash..... | | 200 00 |
| | | | " 16 | " l'd g't r'c'ts..... | | 600 00 |
| | | | " 17 | " 8 shs. stock..... | | 800 00 |
| | | | Dec. 18 | " dis ..... | | 409 00 |
| | | | | | | 2,000 00 |

George Shobel, p. 122.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 23 | 8 shs. stock ..... | 800 00 | Sep. 17 | By 8 shs. stock..... ..... | | 800 00 |
| " 25 | 1 bond, No. 428 ..... | 1,000 00 | " 23 | " cash, &c..... | | 600 00 |
| | | | Feb'y 19 | " dis ..... | | 400 00 |

J. T. Soutter, p. 123.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | | | | |
| Sep. 19 | 10 bonds, 501 to 510..... | 10,000 00 | | | | |
| " 28 | 55 bonds, 956 to 1,000..... | 55,000 00 | | | | |

G. Alexander, p. 111.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 17 | 8 shs. stock | 800 00 | Sep. 8 | By 12 shrs. stock | 1,200 00 |
| " 19 | 1 bond, 359 | 1,000 00 | " 15 | " cash | 400 00 |
| | | | Dec. 18 | " dis | 200 00 |

192 Wm. Dawes, p. 74.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 22 | 3 bonds, 425, 426, 427 | 3,000 00 | Aug. 10 | By cash | 200 00 |
| | | | Sep. 22 | " " | 1,000 00 |
| | | | " 22 | " 10 shs. stock | 1,000 00 |
| | | | " 25 | " 2 " | 200 00 |
| | | | Nov. 17 | " dis | 600 00 |
| | | | | | 3,000 00 |

J. M. Donnelly, p. 59.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 22 | 1 bond, No. 360 | 1,000 00 | Aug. 5 | By cash | 400 00 |
| | | | Sep. 1 | " 4 shs. stock | 400 00 |
| | | | Nov. 17 | " dis | 200 00 |
| | | | | | 1,000 00 |

W. W. Rose, p. 124.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Nov. 23 | 2 bonds, 848 and 849 ..... | 2,000 00 | Sep. 25 | By 8 shs. stock..... | | 800 00 |
| | | | Nov. 23 | " cash..... | | 49 42 |
| | | | " 23 | " home office ..... | | 750 58 |
| | | | Dec. 15 | " dis ..... | | 400 00 |
| | | | | | | 2,000 00 |

W. L. Parsons, p. —.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 25 | 1 bond, No. 440..... | 1,000 00 | Sep. 3 | By cash..... | | 100 00 |
| | | | " 4 | " 4 shs. stock..... | | 400 00 |
| | | | " 11 | " cash..... | | 100 00 |
| | | | " 25 | " " ..... | | 200 00 |
| | | | Dec. 18 | " dis ..... | | 200 00 |
| | | | | | | 1,000 00 |

PRENTIS DOW, p. 52.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1857. | | | | 1857. | | | |
| Aug. | 1 | To cash | 242 77 | July | 23 | By cash | 225 00 |
| | | | | " | 23 | " " | 17 77 |
| | | | 242 77 | | | | 242 77 |
| Sep. | 4 | To cash | 157 18 | Aug. | 18 | By cash | 200 00 |
| " | 26 | 3 bonds, 441, '2, '3 | 3,000 00 | " | 18 | " " | 300 00 |
| " | 28 | 1 S. S. bond | 1,000 00 | Sep. | 1 | " 10 shs. stock | 1,000 00 |
| Oct. | 30 | 11 bonds | 11,000 00 | " | 1 | " 1 bond | 1,000 00 |
| " | 30 | " home office | 1,000 00 | " | 12 | " cash | 157 18 |
| Nov. | 16 | " Halliday, in error | 2,000 00 | Oct. | 5 | " 8 pr. ct. bond | 1,000 00 |
| | | | | " | 6 | " cash | 100 00 |
| | | | | " | 30 | " sundries | 5,250 00 |
| | | | | " | 31 | " cash | 150 00 |
| | | | | Nov. | 10 | " stock from Halliday | 2,000 00 |
| | | | | | 16 | " 4 shs. stock | 400 00 |
| | | | | | | " 4 S. & S. bonds | 4,000 00 |
| | | | | | 17 | " dis | 2,600 00 |
| 193 | | | 18,157 18 | | | | 18,157 18 |
| | | | | 1858. | | | |
| | | | | Feb. | 19 | Paid porter B'k Rep | 5 00 |
| | | | | " | 19 | " R. K. Dow | 75 00 |

S. D. Burchard, p. 58.

| | | | | | |
|---|---|---|---|---|---|
| 1858. | | | 1857. | | |
| Jan. 4 | 11 bonds | 11,000 00 | Aug. 11 | By cash | 500 00 |
| | | | Sep. 1 | " " | 300 00 |
| | | | " 1 | " 45 shs. stock | 4,500 00 |
| | | | Oct. 6 | " cash | 1,100 00 |
| | | | 1858. | | |
| | | | Jan. 14 | " paid rent | 375 00 |
| | | | " 14 | " cash | 2,025 00 |
| | | | Feb. 19 | " dis | 2,200 00 |
| | | | | | 11,000 00 |

Thomas N. McCarter, p. 115.

| | | | | | |
|---|---|---|---|---|---|
| 1858. | | | 1857. | | |
| Jan. 14 | 1 bond, 618 | 1,000 00 | Sep. 5 | By cash | 400 00 |
| | | | 1858. | | |
| | | | Jan. 14 | " 4 shs. stock | 400 00 |
| | | | Feb. 19 | " dis | 200 00 |
| | | | | | 1,000 00 |

S. R. Foster, collateral, p. 31.

| | | | | | |
|---|---|---|---|---|---|
| Sep. 11 | To 50 bonds | 50,000 00 | | | |
| | " 50 " 551 to 600 | 50,000 00 | | | |
| | | 100,000 00 | | | |

S. Chamberlain.

| | | | | | |
|---|---|---|---|---|---|
| Nov. 6 | 100 bond, 701 to 800..... | 100,000 00 | | | |
| Oct. 1 | 100 " 651 to 700, 801 to 825, and 851 to 875..... | 100,000 00 | | | |

Stephen Clark.

| | | | | | |
|---|---|---|---|---|---|
| Nov. 6 | To 53 bonds ..... | 53,000 00 | | | |
| " 16 | " 52 " ..... | 52,000 00 | | | |
| | | 105,000 00 | | | |
| | Deduct 14 bonds to Dow...14,000 | | | | |
| | Deduct 2 b'ds to Wheeler.. 2,000 | | | | |
| | | 16,000 00 | | | |
| | | 89,000 00 | | | |

Mr. Naxon.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | | | |
| Sep. 23 | C. B. 11, 10 bonds, at 47½ cents.... | 10,000 00 | | | |

See report of investigating committee, page 161.

| 1857. | | | 1857. | | |
|---|---|---|---|---|---|
| Sep. 1 | 17 bonds, 175 to 187, and 193 to 196 | 17,000 00 | Aug. 15 | By cash | 1,000 00 |
| | 10 " 251 to 260 | 10,000 00 | " 17 | " " | 500 00 |
| 6 | 3 " 248 to 250 | 3,000 00 | 21 | " " | 500 00 |
| 12 | 7 " 364 to 368, and 400 | 7,000 00 | 31 | " " | 4,000 00 |
| 19 | 10 " 401 to 405, and 408 to 413 | 10,000 00 | Sep. 1 | " " | 3,900 00 |
| Nov. 10 | 10 " | 10,000 00 | " 2 | " " | 1,200 00 |
| 19 | 5 " 899 to 903 | 5,000 00 | " 1 | " 20 sh. stock | 2,000 00 |
| 21 | 5 " 886 to 890 | 5,000 00 | " 1 | " 12 bonds | 12,000 00 |
| 10 | 20 shs. stock | 2,000 00 | " 11 | " 2 bonds | 2,000 00 |
| | Interest | 20 86 | " 5 | " cash | 900 00 |
| | | | 11 | " | 2,000 00 |
| | | | 12 | " | 800 00 |
| | | | 15 | " | 2,000 00 |
| | | | 12 | " 8 sh. stock | 800 00 |
| | | | 15 | 2 bonds | 2,000 00 |
| | | | 17 | 2 " | 2,000 00 |
| | | | 17 | Cash | 2,000 00 |
| | | | Nov. 10 | " | 4,000 00 |
| | | | 10 | 4 bonds | 4,000 00 |
| | | | 12 | Bill rec'ble | 3,270 86 |
| | | | 12 | Cash | 750 00 |
| | | | 17 | Dis | 11,400 00 |
| | | | 19 | 2 S. & S. bonds | 2,000 00 |
| | | | 21 | 2 do. | 2,000 00 |
| | | | Dec. 15 | Dis | 2,000 00 |
| | | 69,020 86 | | | 69,020 86 |

ROYAL G. MILLARD, p. 75.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 1 | 2 bonds, 188 to 189..... | 2, 000 00 | 1857. Aug. 12 | By cash..... | 200 00 |
| | | | Sep. 1 | " " ..... | 600 00 |
| | | | " 1 | " 8 shs. stock..... | 800 00 |
| | | | Nov. 17 | Dis ..... ..... | 400 00 |
| | | | | | 2, 000 00 |

DAVID FAIRBANKS, p. 69.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. | 3 bonds, 122 to 124..... | 3, 000 00 | 1857. Aug. 7 | By cash..... | 300 00 |
| | | | " 15 | " " ..... | 300 00 |
| | | | Sep. 1 | " " .... ..... | 600 00 |
| | | | " 1 | 12 shs. stock..... | 1, 200 00 |
| | | | Nov. 17 | Dis. ..... ..... | 600 00 |
| | | | | | 3, 000 00 |

195

JOEL STONE, p. 86.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sept. | 2 bonds, 125 and 126 ..... | 2, 000 00 | 1857. Aug. 20 | By cash..... | 800 00 |
| | | | Sep. 1 | " 8 shs. stock..... | 800 00 |
| | | | Dec. 18 | " dis..... | 400 00 |
| | | | | | 2, 000 00 |

H. P. Voorhiss, p. 62.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | | | | |
| Sep 1 | 12 bonds, 139 to 148, 199 to 200... | 12,000 00 | Aug. 6 | By cash..... | | 1,000 00 |
| Oct. 30 | 5 " 633 to 637..... | 5,000 00 | " 15 | " " ..... | | 278 16 |
| | | | " 17 | " " ..... | | 721 84 |
| | | | Sep. 1 | " " ..... | | 2,000 00 |
| | | | 2 | " " ..... | | 700 00 |
| | | | 3 | " " ..... | | 300 00 |
| | | | 1 | " 68 shs. stock..... | | 6,800 00 |
| | | | 17 | Dis ..... | | 3,400 00 |
| | | | Nov. 1 | Cash ..... | | 1,800 00 |
| | | 17,000 00 | | | | 17,000 00 |

W. A. Bannester, p. 80.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. | 1 bond, 149..... | 1,000 00 | Aug. 15 | By cash..... | | 100 00 |
| | | | Sep. 1 | " " ..... | | 300 00 |
| | | | " 4 | " 4 sh. stock..... | | 400 00 |
| | | | Nov. 17 | Dis ..... | | 200 00 |
| | | | | | | 1,000 00 |

ALFRED NOXON, p. 77.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 4 | 25 bonds, 150 to 174..... | 25,000 00 | Aug. 14 | By cash..... | | 10,000 00 |
| | | | Sep. 30 | " 100 shs. stock..... | | 10,000 00 |
| | | | Nov. 17 | Dis ..... ..... | | 5,000 00 |
| | | | | | | 25,000 00 |

H. L. RICHARDS, p. 116.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 8 | To cash..... | 50 00 | Sep. 16 | By cash..... | | 50 00 |
| " 28 | " 1 bond, No. 439..... | 1,000 00 | " 28 | " " ..... | | 400 00 |
| Oct. 1 | " 1 " " 443..... | 1,000 00 | " 28 | " 8 sh. stock .... ..... | | 800 00 |
| " 13 | " 2 " " 610 and 611 ..... | 2,000 00 | " 30 | " cash..... | | 400 00 |
| Nov. 10 | " 2 " ..... | 2,000 00 | Oct. 13 | " 8 shs. stock..... | | 800 00 |
| " 16 | " 2 " ..... | 2,000 00 | " 12 | " cash..... | | 400 00 |
| | | | " 13 | " " ..... | | 350 00 |
| | | | " 13 | " " ..... | | 162 00 |
| | | | " 19 | " " ..... | | 100 00 |
| | | | Nov. 2 | " " ..... | | 588 00 |
| | | | " 10 | " 8 shs. stock..... | | 800 00 |
| | | | " 19 | " 8 do. ..... | | 800 00 |
| | | | " 19 | " cash..... | | 800 00 |
| 196 | | | Dec. 18 | " dis..... | | 1,600 00 |
| | | 8,000 00 | | | | 8,000 00 |

FRANKLIN FRISBEE, p. 102.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 3 | To p'd for stock | 40 00 | Sep. 2 | By cash | | 1,640 00 |
| Oct. 5 | " 4 bonds, 536 to 539 | 4,000 00 | " 4 | " 2 shs. stock | | 200 00 |
| | | | Oct. 5 | " 14 do. | | 1,400 00 |
| | | | Dec. 18 | Dis | | 800 00 |
| | | 4,040 00 | | | | 4,040 00 |

P. SOUTHWORTH, p. 67.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Oct. 13 | 3 bonds, 601 to 603 | 3,000 00 | Aug. 7 | By cash | | 300 00 |
| | | | " 24 | " " | | 900 00 |
| | | | Sep. 1 | " 12 shs. stock | | 1,200 00 |
| | | | Nov. 17 | " dis | | 600 00 |
| | | | | | | 3,000 00 |

SHERMAN & INNIS, p. 93.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Oct. 13 | 6 bonds, 604 to 609 | 6,000 00 | Aug. 25 | By cash | | 800 00 |
| Nov. 16 | 8 shs. stock | 800 00 | Sep. 1 | " " | | 800 00 |
| | | | " 10 | " " | | 800 00 |
| | | | Oct. 13 | " 32 shs. stock | | 3,200 00 |
| | | | Dec. 18 | Dis | | 1,200 00 |
| | | 6,800 00 | | | | 6,800 00 |

ROBERT SLEE, p. 94.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 1 | 2 bonds, 224 and 225 ..... | 2,000 00 | 1857. Aug. 25 | By cash..... | 200 00 |
| | | | Sep. 2 | " " ..... | 600 00 |
| | | | " 1 | " 8 shs. stock..... | 800 00 |
| | | | Dec. 18 | Dis ..... | 400 00 |
| | | | | | 2,000 00 |

J. M. MACKIE, p. 83.

| | | | | | |
|---|---|---|---|---|---|
| 1757. Sept. 1 | 6 bonds, 230 to 235..... | 6,000 00 | 1857. Aug. 18 | By cash..... | 1,200 00 |
| | | | Sep. 3 | " " ..... | 1,200 00 |
| | | | " 3 | " 24 shs. stock..... | 2,400 00 |
| | | | Dec. 18 | " dis ..... | 1,200 00 |
| | | | | | 6,000 00 |

JOHN WELLS, p. 61.

| | | | | | |
|---|---|---|---|---|---|
| 1857. Sep. 1 | 2 bonds, 228 and 229..... | 2,000 00 | 1857. Aug. 6 | By cash..... | 200 00 |
| | | | " 17 | " " ..... | 200 00 |
| | | | Sep. 2 | " " ..... | 400 00 |
| | | | " 1 | " 8 shs. stock..... | 800 00 |
| | | | Nov. 17 | Dis ..... | 400 00 |
| | | | | | 2,000 00 |

HENRY TALCOTT, p. 95.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. Sep. 1 | 7 bonds, 236 to 242 | 7,000 00 | 1857. Aug. 26 | By cash | | 400 00 |
| | | | Sep. 3 | " " | | 2,400 00 |
| | | | " 1 | " 28 shs. stock | | 2,800 00 |
| | | | Dec. 18 | Dis | | 1,400 00 |
| | | | | | | 7,000 00 |

THEODORE NICHOLS, p. 56.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. Sep. 1 | 2 bonds, 243 and 244 | 2,000 00 | 1857. Aug. 3 | By cash | | 400 00 |
| | | | " 25 | " " | | 400 00 |
| | | | Sep. 1 | " 8 shs. stock | | 800 00 |
| | | | Nov. 17 | Dis | | 400 00 |
| | | | | | | 2,000 00 |

A. J. RIKER, p. 70.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. Sep. 1 | 2 bonds, 246 and 247 | 2,000 00 | 1857. Aug. 8 | By cash | | 200 00 |
| | | | Sep. 5 | " " | | 600 00 |
| | | | " 1 | " 8 shs. stock | | 800 00 |
| | | | Nov. 17 | " dis | | 400 00 |
| | | | | | | 2,000 00 |

NATHANIEL L. GRISWOLD, p. 90.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 1 | 3 bonds, 190 to 192..... | 3,000 00 | Aug. 21 | By cash..... | 300 00 |
| | | | Sep. 1 | " " ..... | 900 00 |
| | | | " 1 | " 12 shs. stock..... | 1,200 00 |
| | | | Dec. 18 | " dis ..... | 600 00 |
| | | | | | 3,000 00 |

D. E. WHEELER, p. 92.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | 1857. | | |
| Sep. 4 | To dis., &c..... ..... | 2,115 00 | Aug. 25 | By cash..... | 3,000 00 |
| " 1 | 34 bonds, 245 to 197-'8, 226-'7, | | Sep. 2 | " " ..... | 3,200 00 |
| | 296 to 319..... | 34,000 00 | 3 | " " ..... | 5,615 00 |
| 6 | 7 bonds..... ..... | 7,000 00 | 4 | " sundries ..... ..... | 18,700 00 |
| 28 | 4 " 444 to 447..... | 4,000 00 | 6 | " stock ..... | 3,000 00 |
| 1858. | | | 15 | " cash..... | 1,000 00 |
| Jan. 14 | 1 " 625..... | 1,000 00 | 25 | " " ..... | 1,000 00 |
| Feb. 12 | 2 " ..... | 2,000 00 | 28 | " sundries ..... ..... | 2,450 00 |
| | | | Oct. 3 | " cash ..... | 200 00 |
| | | | Nov. 13 | " stock ..... | 800 00 |
| | | | 1858. | | |
| | | | Feb. 1 | " dis ..... | 10,050 00 |
| | | | " 12 | " sundries ..... ..... | 1,100 00 |
| | | 50,115 00 | | | 50,115 00 |

ARTEMAS FISH, p. 63.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sept. | 10 bonds, 201 to 210..... | 10,000 00 | Aug. 6 | By cash ..... | | 1,000 00 |
| | | | " 17 | " " ..... | | 1,000 00 |
| | | | Sep 1 | " " ..... | | 2,000 00 |
| 198 | | | " 1 | " 40 shs. stock..... | | 4,000 00 |
| | | | Nov. 17 | Dis ..... ..... | | 2,000 00 |
| | | | | | | 10,000 00 |

S. R. FOSTER, p. 108.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1857. | | | 1857. | | | |
| Sep. 7 | 13 bonds, 211 to 223..... | 13,000 00 | Sep. 3 | By cash..... | | 5,200 00 |
| Sep. 19 | 12 " 413 to 424..... | 12,000 00 | " 3 | " S. & C., and S. bonds..... | | 5,000 00 |
| 28 | 25 " 511 to 535..... | 25,000 00 | " 19 | " do. ..... | | 5,000 00 |
| Dec. 18 | Dis., ent. twice..... | 10,000 00 | " 19 | " cash..... | | 4,800 00 |
| | | | " 23 | " " ..... | | 10,000 00 |
| | | | " 30 | " S. & C., and S. bonds..... | | 10,000 00 |
| | | | Nov. 17 | " dis ..... | | 10,000 00 |
| | | | Dec. 18 | " dis ..... | | 10,000 00 |
| | | 60,000 00 | | | | 60,000 00 |

*La Crosse and Milwaukie second mortgage bonds, eastern division.—Summary.*

| Names. | Number of bonds. | Amount. |
|---|---|---|
| S. H. Alden | 100 | 100, 000 |
| Jonathan Rowe | 1 | 1, 000 |
| Wm. A. Davis | 12 | 12, 000 |
| Henry Staats | 4 | 4, 000 |
| Ulyses Cole | 2 | 2, 000 |
| B. F. Potter | 2 | 2, 000 |
| David Fairbanks | 3 | 3, 000 |
| Joel Stone | 2 | 2, 000 |
| H. P. Voorhis | 17 | 17, 000 |
| W. A. Bannister | 1 | 1, 000 |
| Alfred Noxon | 25 | 25, 000 |
| " " | 10 | 10, 000 |
| E. C. Halliday | 67 | 67, 000 |
| R. G. Millard | 2 | 2, 000 |
| N. S. Griswold | 3 | 3, 000 |
| D. E. Wheeler | 48 | 48, 000 |
| A. Fish | 10 | 10, 000 |
| S. R. Foster | 50 | 50, 000 |
| R. Slee | 2 | 2, 000 |
| J. Wells | 2 | 2, 000 |
| J. M. Mackie | 6 | 6, 000 |
| H. Talcott | 7 | 7, 000 |
| T. Nicholls | 2 | 2, 000 |
| A. J. Riker | 2 | 2, 000 |
| David Dows | 25 | 25, 000 |
| 199 Rev'd George Morris | 5 | 5, 000 |
| S. Buel | 12 | 12, 000 |
| Atwood & Co | 25 | 25, 000 |
| G. C. Bronson | 15 | 15, 000 |
| J. L. Everett | 3 | 3, 000 |
| W. H. Putnam | 1 | 1, 000 |
| H. Vallette | 10 | 10, 000 |
| G. Halsey | 1 | 1, 000 |
| J. D. De Graff | 5 | 5, 000 |
| John Knower | 5 | 5, 000 |
| R. McMuller | 2 | 2, 000 |
| L. Chichester | 2 | 2, 000 |
| G. Shobel | 1 | 1, 000 |
| J. T. Soutter | 65 | 65, 000 |
| G. Alexander | 1 | 1, 000 |
| J. M. Donnelly | 1 | 1, 000 |
| Wm. Dawes | 3 | 3, 000 |
| W. W. Rose | 2 | 2, 000 |
| W. L. Parsons | 1 | 1, 000 |
| Prentis Dow | 13 | 13, 000 |
| | 1 deducted for error. | |
| H. L. Richards | 8 | 8, 000 |
| F. Frisbee | 4 | 4, 000 |

*La Crosse and Milwaukie second mortgage bonds, &c.*—Continued.

| Names. | Number of bonds. | Amount. |
|---|---|---|
| P. Southworth | 3 | 3, 000 |
| Sherman & Innis | 6 | 6, 000 |
| S. D. Burchard | 11 | 11, 000 |
| J. N. McCarter | 1 | 1, 000 |
| S. R. Foster, collaterals | 100 | 100, 000 |
| S. Chamberlain | 200 | 200, 000 |
| Stephen Clark | 89 | 89, 000 |
| | 1, 000 | 1, 000, 000 |

LA CROSSE AND MILWAUKIE R. R. Co , *Albany, N. Y.*

I hereby certify that the foregoing is a correct copy, from the books of the office, of the disposition of the 2d mortgage bonds upon the eastern division of the company's road.

(Signed) N. P. STANTON, *President.*

The 2d mortgage was sold to 54 parties, 43 of whom paid partly in stock to the amount of 971 shs., or $97,100. Thus:

| | |
|---|---|
| Stock payments | $97,100 |
| Chamberlain | 200,000 |
| Foster | 100,000 |
| Soutter | 65,000 |
| | 462,100 |

to say nothing of the items of "sundries" in several a'co. The whole amount the company realized in cash is said to have been less than $200,000.

200 UNITED STATES OF AMERICA,
*Southern district of New York, ss:*

I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing *deposition*

is, and the fact is, the *witness* is material and necessary in the cause in the caption of the said deposition named, and that *he* resides in the State of New Jersey, at a greater distance than 100 miles from the place of trial. I further certify that a notification of the time and place of taking the said *deposition*, signed by me, was made out and served on the adverse party to be present at the taking of the said *deposition* and to put interrogatories if he or they might think fit.

I further certify that on the 22d day of January, in the year of our Lord one thousand eight hundred and sixty-one, I was attended by D. E. Wheeler, esq., counsel for the compl'ts, and by the *witness*, who was of sound mind and lawful age, and the *witness* was by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *deposition* was by me reduced to writing in the presence of the *witness*, and from his statement and after carefully reading the same to the *witness* he subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of mailing the same to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

R. E. STILWELL, [SEAL.]
*United States Commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit.*

UNITED STATES OF AMERICA,
*Southern district of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting
201 of R. E. Stilwell, whose name is subscribed to the annex certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court this twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of these United States the eighty-fifth.

SEAL OF U. S. C. C. S. D. N. Y.

KENNETH G. WHITE, *Clerk.*

Clerk, com'r, and postage, $12 $\frac{30}{100}$.

And afterwards, to wit, on the 8th day of February, 1861, came the complainants, by their solicitor, and filed objections to the deposi-

sions, Jackson Hadley, Moses Kneeland, Byron Kilbourn, Prentis Dow, N. P. Stanton, Broadhead, Catlin, and Jervis, which are as follows:

*Motion to suppress depositions, &c.*

District court of the United States for the district of Wisconsin—
In chancery.

GREENE C. BRONSON *et al.*
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et al.*

And now come the said complainants, by their solicitors, and move the court to suppress the entire deposition of Jackson Hadley.

1st. Because the Milwaukee & Minnesota Railroad Company have no interest in the facts called forth by the deposition, or in the frauds practiced upon the La Crosse & Milwaukee Railroad Company.

2nd. Because said defendants are estopped from denying the validity of the mortgage set forth in the complaint and the bonds secured thereby.

3. Because it appears by the answers that said Hadley testifies from hearsay, and there is no interrogatory calling for such testimony.

And said complainants further move that all answers to those interrogatories which were objected to by the complainants be suppressed, because the said interrogatories were improper, for the reasons assigned in said objections filed in this case.

And the said complainants further move to suppress the entire deposition of Moses Kneeland, for the reasons 1st, and 2d, and 3d above assigned; and also suppress the answers to those interrogatories which were objected to by the complainants, because the said interrogatories were improper, for the reasons assigned in the said objections filed in this case.

And the said complainants further move to suppress the entire deposition of Byron Kilbourn, for the reasons 1st, 2nd, and 3rd
202 above assigned; for suppressing the deposition of Jackson Hadley, and also to suppress the answers to those interrogatories which were objected to by the complainants, because the said interrogatories were improper for the reasons assigned in the said objections filed in this case.

And the said complainants further move to suppress the entire deposition of Prentiss Dow, for the reasons 1st, 2nd and 3d above assigned for suppressing the deposition of Jackson Hadley, and also to suppress the answers to those interrogatories which were objected to by the complainants, because the said interrogatories were improper, for the reasons assigned in the said objections filed in this case.

And they further move to suppress the testimony of N. P. Stanton, for the reason that the statement appended thereto appears upon its face to be a copy of a copy from an unauthorized book, the possession of which appears to be in Barnes, the grantee of the defendants.

And to suppress the testimony of Brodhead, Catlin & Jervis for

the reason that the matters therein testified to, are not founded on any statement in the pleadings, and immaterial and irrelevant.

Feb'y 8, 1861.—Ordered by the court that the statement annexed to the deposition of N. P. Stanton be suppressed, and that, with that exception, this motion be overruled.

*Deed to Mil., Wat. & B. V. R. R. Co.*

The district court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE, WATERTOWN, AND BARABOO VALLEY RAILROAD COMPANY, AND OTHERS.

It is hereby stipulated and agreed between the complainants, by their solicitors, and the defendant, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, that the original of the deed of conveyance, copy of which is hereto annexed, is to treated as proven on the part of the defendants, the Milwaukee, Watertown, and Baraboo Valley Railroad Company; and such copy may be read in evidence on the hearing, the same as the original deed might be if produced and proven before a master on a reference or commission for that purpose. Such original will be produced for inspection at any time on request.

Dated January 7th, 1861.

THOMAS L. OGDEN,
*Sol. for Comp't.*

203 *Deed.*

This indenture, made this twenty-fourth day of December, eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, party of the first part, and the Madison, Fond du Lac, and Michigan Railroad Company, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one million of dollars, to the said party of the first part paid, has bargained, sold, assigned, set over, aliened, and confirmed, and by these presents does bargain, sell, assign, set over, and confirm, unto the party of the second part, the Watertown division of the railroad of the party of the first part, being that portion of said road and line of road situated, lying, and being in the State of Wisconsin, and in and between the city of Milwaukee, and (by the way of Watertown and Columbus) to the intersection of the said line with the line of railroad of the party of the second part in the county of Columbia, not distant, however, more than six miles from the present town of Columbus, together with all and singular the right of way, depot grounds, embankments, bridges, culverts, superstructures and track, machinery, equipments, rolling stock, engines, tenders, locomotives, cars, tools, implements, machine shops, repair shops, and tools therein or thereto belonging, station houses, storehouses,

water tanks, and all other things or matters thereto in anywise appertaining or belonging, real estate, personal estate, or mixed estate, together with all rights, privileges, franchises, and immunities. To have, hold, use, occupy, operate, and enjoy the same, with all the profits, emoluments, earnings, and income to be produced thereby or derived therefrom, forever, so far as the same belongs and appertains to that portion of said line of road or so much thereof as is above described; and hereby fully authorizing and empowering the said party of the second part to immediately enter into and upon the said road and all portions of said line, and do and perform any and all such lawful acts as the party of the first part might do in the building, finishing, equipping, repairing, and operating of the said road and line of road above described, (whether now constructed or to be constructed,) or in the procuring right of way, depot grounds, and all other things necessary or proper to be done; hereby covenanting with the said party of the second part that the party of the second part shall have, possess, use, own, and enjoy the same in quietude and peace to the said party of the second part or assigns forever, subject, however, as part of the purchase price, to the following charges, liens, and incumbrances thereon, and none other, to wit: a mortgage or mortgage bonds on that portion of said road east of Watertown to the amount of three hundred and ten thousand dollars, called first mortgage.

Also, to a mortgage on the portion of said road last above described to the city of Milwaukee for the sum of two hundred thousand dollars, given to said city by the Milwaukee and Watertown Railroad Company, as collateral to the bond of said last-named company, to indemnify said city for an issue or issues of two hundred thousand dollars of its bonds to said last-named company to aid in the construction of its road.

Also, subject to unpaid bonds to the amount of one hundred
204 and eighteen thousand dollars issued by said last-named company, which are also secured by a mortgage of that portion of said road last aforesaid; also to the provision of two certain contracts for running connections made by the Milwaukee and Watertown Railroad Company with the Milwaukee and Mississippi Railroad Company, and another with the Watertown and Madison Railroad Company, respectively and severally.

Also, subject to a portion of a mortgage for the sum of one million of dollars, made by the La Crosse & Milwaukee Railroad Company, bearing date September 1st, 1857, and incumbering the eastern division of the La Crosse & Milwaukee Railroad, from Milwaukee, by way of Beaver Dam, to Portage City; and also that portion of the Watertown division aforesaid between Watertown and Midland, which portion of said mortgage that this conveyance is made subject to being hereby fixed and stipulated at the sum of two hundred and eighty-three thousand dollars, which shall hereafter at all times be taken, deemed, and declared as the amount of said mortgage, justly chargeable upon said line, so hereby conveyed, with interest proportionate thereon, to be paid from time to time as the same matures, (both principal and interest,) by the party of the second part, upon the

bonds issued by the first party, and secured by said last-mentioned mortgage; and the remainder is to stand only and exclusively chargeable upon the said eastern division, and be paid and discharged in manner aforesaid by the first party, and the party of the second part saved harmless therefrom.

And the said party of the first part covenant and agrees with the said party of the second part to defend, protect, and at all times save harmless the said party of the second part from any and all other debts, charges, mortgages, incumbrances, judgments, and liens of every kind and nature, except those above excepted and specified, and to the extent fixed above, and procure all such (if any) to be released, discharged, cancelled, and satisfied.

In consideration whereof, the said party of the second part hereby covenants and agrees with the said party of the first part to receive, and does hereby receive, this conveyance, subject to the charges, liens, incumbrances, and liabilities as above expressed and stipulated, both as to principal and interest, and none other, and to defend and protect the said party of the first part from the payment of any monies, the foreclosure of any mortgages, or from being in any manner charged and made liable in the premises than as above expressed and stipulated, and fully to indemnify and save harmless the said party of the first part from any and all such liabilities as the said party of the first part may have assumed, or become in any manner liable to and chargeable with, on account or by reason of the incumbrances, contracts, or liabilities aforesaid to the amount of and as herein above expressed and limited.

And the said party of the second part further covenants and agrees to and with the said party of the first part to perform and fulfil, as such engagements, contracts and agreements, made and entered into with either of the towns of Columbus, Fountain, Prairie, and
205 Hampden, by the Milwaukee & Watertown Railroad Company, in consideration of the issue of the bonds of said towns severally to the Milwaukee & Watertown Railroad Company, for which the party of the first part has become liable to and chargeable with the fulfillment and performance of, in consequence of the consolidation of the said last-named railroad company with the party of the first part, and to save the first party harmless and fully indemnified therefrom and against.

And the party of the first part further covenants and agrees that it will sell, and by usual and needful instruments in writing, convey to the party of the second part all that portion of its line of road called the Portage division, being so much of said line as is situated in, and lying in and between the city of Madison and the junction of said Portage division with the eastern division of said La Crosse and Milwaukie railroad, at or near the city of Portage City, together with all right of way, depot grounds, embankments, culverts, bridges, and superstructures, so far the same have been constructed, together with all franchises, immunities, privileges, and all other things and matters in anywise pertaining to the same, and hereby authorizing the exercise and assuming all the rights and powers of the parties of the first part to the party of the second part in relation thereto,

together with the proportionate share or portion of the public lands granted to the party of the first part by the State of Wisconsin to aid in the construction of said last-mentioned line of road, being six sections to each mile of said division, to be selected and set apart for the use of the party of the second part, in manner following, that is to say: After the party of the first part shall have received such portion of such public lands as it shall be entitled to for the construction of its road from Portage City to the junction, the party of the second part may, as their work progresses, receive such quantity as it may or shall be entitled to from lands next westerly from those conveyed to the La Crosse & Milwaukie Railroad Company, applicable to their finished line, under the provisions of this contract, and the grant made by the State and the conveyance shall be made in pursuance hereof, from any or all lands to which the party of the first part then is, or will, or may at any time become entitled from such grant; and the lands so received, as the work progresses, shall be retained and from time to time conveyed to the party of the second part, as it may from time to time become entitled thereto, which shall be upon the same terms and conditions prescribed by law for their conveyance to the party of the first part.

In consideration whereof the party of the second part agrees to assume the duties and obligations imposed upon the party of the first part by law in relation to said division, and to complete and construct the said road from Madison to Portage City as aforesaid, within such time as shall be necessary and essential to a compliance with the duty of the party of the first part to the State of Wisconsin; and the party of the first part shall make such conveyance whenever any legal
206 disability (if any now exists) shall be removed by proper legislative enactment or authority so to do; and the party of the first part shall cause all such charges and incumbrances or liens as they shall have placed, or shall be upon the said Portage division to be removed and discharged from their effect and charge on such division, or may, at the time of such conveyance, deliver to the party of the second part, an amount of first and second mortgage bonds on said division, proportionate to the amount of each issue upon said line from Madison, by way of Portage City to St. Croix, as the length of the Portage division shall bear to the whole length of the land grant line of said party of the first part, or that portion of it which shall be built.

Such delivery of bonds may be made by depositing such bonds with proper trustees, to be agreed upon by the parties hereto, (and in case of disagreement, to be appointed by the supreme court of the State of Wisconsin, thirty days' written notice given to either by the other party,) who shall deliver such bonds to the party of the second part, as the work progresses, proportionately, until the work is done, and until all bonds are so delivered, and until such mortgage and liens are so discharged, or such bonds so deposited, the party of the second part shall not be required to proceed with the construction of the said Portage division, and shall not be deemed in default for such delay, but may proceed with the work or not in their discretion. But the party of the first part shall cause such discharges and releases to be

made, or such bonds to be so deposited, in time to enable the party of the second part to comply with the requirements of the law in the construction of such division.

And in consideration of the foregoing contracts, covenants, and conveyances, the party of the second part hereby further covenant and agree that they will assume, and do hereby assume, the liability and obligations of the contract for the construction of the said Portage division, made by the first party with Darius C. Jackson, and to save the said first party harmless from all monies and payments due, or to grow due thereon, under or by virtue of said contract, and to do and perform all matters and things to be done, and still remaining undone, under such contract, either for or on account of work done and performed, or to be done and performed, or damages for unfulfillment on the part of the said party of the first part.

And the party of the second part further agrees to pay to S. & C. Howard all such sums as shall be due, or to become due, on account of work done by them on said Portage division, under contract of D. C. Jackson, and save the first party harmless therefrom.

And the party of the first party hereby releases and discharges a contract entered into between the parties hereto guarantied by S. L. Rose, dated in or about the month of December, 1856, for the receipt and return of twenty-four thousand dollars of farm mortgage bonds by the party of the second part, and such contract is to be satisfied and surrendered herewith, and all claims and demands against said party of the second part on account thereof are hereby re-
207 leased and discharged; and all claims for aid from the party of the first to the party of the second part, in the construction of three miles of the road of the second party next to Beaver Dam, are hereby released and declared fully satisfied.

And the party of the second part further agrees to pay all taxes due and payable to the State of Wisconsin on account of earnings on any portion of road or line hereby contracted to be conveyed hereafter, to accrue.

And it is hereby further agreed by the party of the second part that, in case the said party of the second part shall make default in the payment of any interest, principal or sinking fund, to become due on any mortgage debt hereby assumed by said second part, and shall continue in default for the space of twenty days, then, in that case, the party of the first part may revoke and may declare null this indenture and all things herein contained, except as hereinafter stated; and may proceed to demand and shall be entitled to recover immediate possession of all the property, of every name and description, hereby and herein sold and conveyed, or agreed to be sold and conveyed; and the party of the second part agrees to surrender peaceably into the possession of the said party of the first part the same, without hindrance, delay, or resistance; but after receiving such surrender and possession the party of the first part shall proceed to foreclose the right and interest of the party of the second part in and to the same, by notice of not less than six months, in not less than two newspapers of most general circulation published in the city of Milwaukee, and like notice in the city of New York; and may, upon such notice, make

absolute and complete foreclosure and extinguishment of all the rights and interest of the party of the second part, in and to the premises and property hereby conveyed and contracted to be conveyed, and become purchasers thereof, or may sell and convey to other parties, as in other cases of foreclosure, rendering the surplus, if any, above the amounts due, or to grow due, and costs and expenses to the party of the second part.

The party of the second part receives this conveyance and contract to convey, subject to all unsatisfied claims for right of way, and subject to the liabilities of the party of the first part, in a lease to D. C. Freeman, under which he is now or has recently been operating said Watertown division.

And the said party of the second part agrees to receive and hold all earnings of the road, over and above current expenses for repairing and operating the same, in trust for the second part, so far as necessary, and to keep the same deposited, as it accrues, with some responsible and reliable banking-house, to the credit of a responsible trustee, to be by the second party from time to time appointed, and cause the same to be paid over to the party of the first part, at least ten days before the same shall at any time become due, to be paid by the party of the second part for interest on the said sum of two hundred and eighty-three thousand dollars chargeable on that portion of said division west of Watertown, and to pay all other principal and interest hereby assumed to the parties entitled to the same when due.

208 And the party of the first part hereby sells, assigns, and sets over unto the party of the second part its interest and rights, legal and equitable, in and to any contracts, agreements, leases, and engagements, made and entered into by the party of the first part, or its predecessors, for the benefit or use of or in any manner affecting said Watertown division, so far as the same may affect said Watertown division. The interest to be paid by the party of the second part is to be equal to the amount hereafter to accrue on said liabilities hereby assumed.

And it is hereby agreed that in case the said first party shall come into possession of the property aforesaid, that the affairs of said road shall be conducted and the road operated with all proper economy and prudency, and whenever the nett receipts shall be sufficient, or whenever the party of the second part, or its assigns, shall furnish an amount, including such net receipts, (if before such final sale,) to pay up, satisfy, and discharge any and all sums so due and in arrears on such assumed liabilities, then the right of possession, use, and occupation by the said party of the first part shall cease, and the said property shall be surrendered to the party of the second part, and continue in use and occupation of the party of the second part, until they shall again be in default as aforesaid, when the same rights, privileges, and remedies shall be restored to and continue alike effectual and operative.

And it is hereby mutually covenantedand agreed that either party shall and will at any time execute and deliver any further, other, or different release, acquitance, assurance, conveyance, or instrument, necessary or essential to a complete and effectual carrying into effect

the true intent and design of the foregoing covenants, agreements, or conveyances, or any of them.

In witness whereof, the parties hereto have caused these presents to be signed by the presidents of the respective parties, for and on behalf of and in the name of the parties hereto, who are thereto duly authorized and empowered the day and year first above written.

La Crosse and Milwaukee Railroad Company,
(Signed) By STEPHEN CLARK, *President.*
Madison, Fond du Lac, and Michigan Railroad Company,
(Signed) By S. L. ROSE, *President.*

In presence of—
ALEX. OSTRANDER.
JOHN LEWIS.

STATE OF NEW YORK, *City and County of New York:*

On this 26th day of December, 1857, before the subscriber, a commissioner in and for said State, appointed by the governor of Wisconsin to take the acknowledgement and proof of execution of deeds, and of other writings to be used or recorded in the said State of Wisconsin, appeared the within signing Stephen Clark, as president of the
209 La Crosse and Milwaukee Railroad Company, and S. L. Rose, president of the Madison, Fond du Lac, and Michigan Railroad Company, each personally known to me to be the identical persons whose names are hereunto subscribed, and several acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and [SEAL.] seal the day and year first above written.

(Signed) ALEX. OSTRANDER,
*Commissioner for Wisconsin*, 111 *Broadway, New York.*

*Contract.*

Whereas a conveyance, release, and agreement, executed in duplicate by the Milwaukee, Watertown, and Baraboo Valley Railroad Company, intended to be executed also by this company, together with a copy of resolutions adopted by said Milwaukee, Watertown, and Baraboo Valley Railroad Company, having been submitted by Mr. Noxon for approval, and after having been read, it was

*Resolved*, That said reconveyance, mutual releases, and agreement be, and the same are hereby, approved, ratified, and confirmed, and that the president be, and he is hereby, directed to execute said instrument in duplicate, afixing the seal of this company, retaining one copy and delivering the other to said Noxon for said Milwaukee, Watertown, and Baraboo Valley Railroad Company.

I hereby certify that the foregoing resolution and annexed contract are true copies of a resolution, and of acontract therein referred to, adopted and approved at a meeting of the board of directors of this

company on the 29th day of December instant, and of the whole of said resolution and contract, and of all proceedings relating thereto.

SEAL OF LA CROSSE &. MIL. R. RD. CO.

Witness my hand and the corporate seal of the said company the day and year first above written. D. V. N. RADCLIFF,
*Assistant Secretary at Albany, N. Y.*

This indenture, made December 20th, 1858, between the La Crosse and Milwaukee Railroad Company, party of the first part, and the Milwaukee, Watertown, and Baraboo Valley Railroad Company, formerly Madison, Fond du Lac, and Michigan Railroad Company, party of the second part, witnesseth: That whereas, on the twenty-fourth day of December, 1857, the parties hereto entered into a certain indenture, in the words and figures following:

*Deed.*

This indenture, made this twenty-fourth day of December, eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, party of the first part, and the Madison, Fond du Lac, and Michigan Railroad Company, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one million of dollars to the said
210 party of the first part paid, has bargained, sold, assigned, set over, aliened, and confirmed, and by these presents does bargain, sell, assign, set over, and confirm, unto the party of the second part, the Watertown division of the railroad of the party of the first part, being that portion of said road and line of road situated, lying, and being in the State of Wisconsin, and in and between the city of Milwaukee, and (by the way of Watertown and Columbus) to the intersection of the said line with the line of railroad of the party of the second part, in the county of Columbia, not distant, however, more than six miles from the present town of Columbus, together with all and singular the right of way, depot grounds, embankments, bridges, culverts, superstructures, and track, machinery, equipments, rolling stock, engines, tenders, locomotives, cars, tools, implements, machine shops, repair shops, and tools therein or thereto belonging; station-houses, storehouses, water-tanks, and all other things or matters thereto in anywise appertaining or belonging; real estate, personal estate, or mixed estate, together with all rights, privileges, franchises, and immunities, to have, hold, use, occupy, operate, and enjoy the same, with all the profits, emoluments, earnings, and income to be produced thereby or derived therefrom, forever, so far as the same belongs and appertains to that portion of said line of road, or so much thereof as is above described; and hereby fully authorizing and empowering the said party of the second part to immediately enter into and upon the said road, and all portions of said line, and do and perform any and all such lawful acts as the party of the first part might do in the building, finishing, equipping, repairing, and operating of the said road and line of road above described, (whether now constructed or to be constructed,) or in the procuring right of way, depot

grounds, and all other things necessary or proper to be done; hereby covenanting with the said party of the second part that the party of the second part shall have, possess, use, own, and enjoy the same in quietude and peace to the said party of the second part, or assigns forever, subject, however, as part of the purchase price, to the following charges, liens, and incumbrances thereon, and none other, to wit: a mortgage or mortgage bonds on that portion of said road east of Watertown, to the amount of three hundred and ten thousand dollars, called first mortgage.

Also to a mortgage on the portion of said road last above described to the city of Milwaukee for the sum of two hundred thousand dollars, given to said city by the Milwaukee & Watertown Railroad Company as collateral to the bond of said last-named company, to indemnify said city for an issue or issues of two hundred thousand dollars of its bonds to said last-named company to aid in the construction of its road.

Also subject to unpaid bonds to the amount of one hundred and eighteen thousand dollars, issued by said last-named company, which are also secured by a mortgage of that portion of said road last aforesaid. Also to the provision of two certain contracts for running connections made by the Milwaukee and Watertown Railroad Company with the Milwaukee and Mississippi Railroad Company, and another with the Watertown & Madison Railroad Company, respectively and severally.

211

Also, subject to a portion of a mortgage for the sum of one million of dollars, made by the La Crosse and Milwaukee Railroad Company, bearing date September 1st, 1857, and incumbering the eastern division of the La Crosse and Milwaukee Railroad, from Milwaukee, by way of Beaver Dam to Portage City; and also that portion of the Watertown division aforesaid between Watertown and Midland, which portion of said mortgage that this conveyance is made subject to being hereby fixed and stipulated at the sum of two hundred and eighty-three thousand dollars, which shall hereafter at all times be taken, deemed, and declared as the amount of said mortgage, justly chargeable upon said line so hereby conveyed, with interest proportionate thereon, to be paid from time to time as the same matures, (both principal and interest,) by the party of the second part, upon the bonds issued by the first party, and secured by said last-mentioned mortgage; and the remainder is to stand only and exclusively chargeable upon the said eastern division, and be paid and discharged in manner aforesaid, by the first party, and the party of the second part saved harmless therefrom.

And the said party of the first part convenant and agrees with the said party of the second part to defend, protect, and at all times save harmless, the said party of the second part, from any and all other debts, charges, mortgages, incumbrances, judgments, and liens of every kind and nature, except those above excepted and specified, and to the extent fixed above, and procure all such (if any) to be released, discharged, cancelled, and satisfied.

In consideration whereof, the said party of the second part hereby convenants and agrees with the said party of the first part to receive, and does hereby receive, this conveyance, subject to the charges, liens,

incumbrances, and liabilities as above expressed and stipulated, both as to principal and interest, and none other, and to defend and protect the said party of the first part from the payment of any monies, the foreclosure of any mortgages, or from being in any manner charged and made liable in the premises than as above expressed and stipulated, and fully to indemnify and save harmless the said party of the first part from any and all such liabilities as the said party of the first part may have assumed or become in any manner liable to and chargeable with on account or by reason of the incumbrances, contracts, or liabilities aforesaid, to the amount of and as herein above expressed and limited.

And the said party of the second part further convenants and agrees, to and with the said party of the first part, to perform and fulfil all such engagements, contracts, and agreements, made and entered into with either of the towns of Columbus, Fountain, Prairie, Hamden, by the Milwaukee and Watertown Railroad Company, in consideration of the issue of the bonds of said towns severally to the Milwaukee and Watertown Railroad Company, for which the party of the first part has become liable to and chargeable with the fulfilment and performance of in consequence of the consolidation of the said last-named railroad company, with the party of the first part, and to save the first party harmless and fully indemnified therefrom and against.

212

And the party of the first part further covenants and agrees that it will sell, and by usual and needful instruments in writing convey, to the party of the second part, all that portion of its line of road called the Portage division, being so much of said line as is situated in, and lying in and between the city of Madison and the junction of said Portage division, with the eastern division of said La Crosse and Milwaukee Railroad, at or near the city of Portage City; together with all right of way, depot grounds, embankments, culverts, bridges, and superstructures, so far the same have been constructed, together with all franchises, immunities, privileges, and all other things and matters in anywise pertaining to the same; and hereby authorizing the exercise and assuming all the rights and powers of the parties of the first part to the party of the second part in relation thereto, together with the proportionate share or portion of the public lands granted to the party of the first part by the State of Wisconsin, to aid in the construction of said last-mentioned line of road, being six sections to each mile of said division, to be selected and set apart for the use of the party of the second part, in manner following, that is to say: After the party of the first part shall have received such portion of such public lands as it shall be entitled to for the construction of its road from Portage City to the junction, the party of the second part may, as their work progresses, receive such quantity as it may or shall be entitled to from lands next westerly from those conveyed to the La Crosse and Milwaukee Railroad Company, applicable to their finished line, under the provisions of this contract and the grant made by the State; and the conveyance shall be made in pursuance hereof, from any or all lands to which the party of the first part then is, or will, or may at any time become entitled from such grant.

And the lands so received, as the work progresses, shall be retained, and from time to time conveyed to the party of the second part, as it may from time to time become entitled thereto, which shall be upon the same terms and conditions prescribed by law for their conveyance to the party of the first part.

In consideration whereof, the party of the second part agrees to assume the duties and obligations imposed upon the party of the first part by law in relation to said division, and to complete and construct the said road from Madison to Portage City as aforesaid, within such time as shall be necessary and essential to a compliance with the duty of the party of the part to the State of Wisconsin. And the party of the first part shall make such conveyance whenever any legal disability (if any now exist) shall be removed by proper legislative enactment or authority so to do. And the party of the first
213 part shall cause all such charges, and incumbrances or liens as they shall have placed or shall be upon the said Portage division to be removed and discharged from their effect and charge on such division, or may at the time of such conveyance, deliver to the party of the second part, an amount of first and second mortgage bonds on said division proportionate to the amount of each issued upon said line from Madison, by way of Portage City, to St. Croix, as the length of the Portage division shall bear to the whole length of the land grant line of said party of the first part, or that portion of it which shall be built.

Such delivery of bonds may be made by depositing such bonds with proper trustees to be agreed upon by the parties hereto, and, in case of disagreement, to be appointed by the supreme court of the State of Wisconsin, thirty days' written notice given to either by the other party, who shall deliver such bonds to the party of the second part, as the work progresses, proportionately, until the work is done; and until all bonds are so delivered, and until such mortgage and liens are so discharged, or such bonds so deposited, the party of the second part shall not be required to proceed with the construction of the said Portage division, and shall not be deemed in default for such delay, but may proceed with the work or not in their discretion. But the party of the first part shall cause such discharges and releases to be made, or such bonds to be so deposited in time to enable the party of the second part to comply with the requirements of the law in the construction of such division.

And in consideration of the foregoing contracts, covenants, and conveyances, the party of the second part hereby further covenant and agree that they will assume, and do hereby assume, the liability and obligations of the contract for the construction of the said Portage division made by the first party with Darius C. Jackson, and to save the said first party harmless from all monies and payments due or to grow due thereon under or by virtue of said contract, and to do and perform all matters and things to be done and still remaining undone under such contract, either for or on account of work done and performed or to be done and performed, or damages for unfulfillment on the part of the said party of the first part.

And the party of the second part further agrees to pay to S. and C.

Howard all such sums as shall be due or to become due on account of work done by them on said Portage division, under contract of D. C. Jackson, and save the first party harmless therefrom.

And the party of the first part hereby releases and discharges a contract entered into between the parties hereto guarantied by S. L. Rose, dated in or about the month of December, 1856, for the receipt and return of twenty-four thousand dollars of farm mortgage bonds by the party of the second part, and such contract is to be satisfied and surrendered herewith; and all claims and demands against said party of the second part on account thereof are hereby released
214 and discharged; and all claims for aid from the party of the first to the party of the second part, in the construction of three miles of the road of said second party next to Beaver Dam, are hereby released and declared fully satisfied.

And the party of the second part further agrees to pay all taxes due and payable to the State of Wisconsin on account of earnings on any portion of road or line hereby contracted to be conveyed hereafter to accrue.

And it is hereby further agreed by the party of the second part that in case the said party of the second part shall make default in the payment of any interest, principal, or sinking fund, to become due on any mortgage debt hereby assumed by said second part, and shall continue in default for the space of twenty days, then in that case the party of the first part may revoke and may declare null this indenture, and all things herein contained, except as hereinafter stated; and may proceed to demand, and shall be entitled to recover, immediate possession of all the property of every name and description hereby and herein sold and conveyed, or agreed to be sold and conveyed; and the party of the second part agrees to surrender peaceably into the possession of the said party of the first part the same, without hindrance, delay, or resistance; but after receiving such surrender and possession, the party of the first part shall proceed to foreclose the right and interest of the party of the second part in and to the same, by notice of not less than six months, in not less than two newspapers of most general circulation published in the city of Milwaukee, and like notice in the city of New York; and may, upon such notice, make absolute and complete foreclosure and extinguishment of all the rights and interests of the party of the second part in and to the premises and property hereby conveyed and contracted to be conveyed, and become purchasers thereof, or may sell and convey to other parties, as in other cases of foreclosure, rendering the surplus (if any) above the amounts due or to grow due and the costs and expenses to the party of the second part.

The party of the second part receives this conveyance and contract to convey subject to all unsatisfied claims for right of way, and subject to the liabilities of the party of the first part in a lease to D. C. Freeman, under which he is now, or has recently been, operating said Watertown division.

And the said party of the second part agrees to receive and hold all earnings of the road, over and above current expenses for repairing and operating the same, in trust for the second part, so far as neces-

sary, and to keep the same deposited, as it accrues, with some responsible and reliable banking-house, to the credit of a responsible trustee, to be by the second party from time to time appointed, and cause the same to be paid over to the party of the first part at least ten days before the same shall at any time become due, to be paid by the party of the second part for interest on the said sum of two hundred and eighty-three thousand dollars chargeable on that portion of said division west of Watertown, and to pay all other principal and
215 interest hereby assumed to the parties entitled to the same when due.

And the party of the first part hereby sells, assigns, and sets over unto the party of the second part, its interest and rights, legal and equitable, in and to any contracts, agreements, leases and engagements, made and entered into by the party of the first part, or its predecessors, for the benefit or use of or in any manner affecting said Watertown division, so far as the same may affect said Watertown division; the interest to be paid by the party of the second part is to be equal to the amount hereafter to accrue on said liabilities hereby assumed.

And it is hereby agreed that in case the said first party shall come into possession of the property aforesaid, that the affairs of said road shall be conducted and the road operated with all proper economy and prudency; and whenever the nett receipts shall be sufficient, or whenever the party of the second part, or its assigns, shall furnish an amount, including such net receipts, (if before such final sale,) to pay up, satisfy, and discharge any and all sums so due and in arrears on such assumed liabilities, then the right of possession, use, and occupation by the said party of the first part shall cease, and the said property shall be surrendered to the party of the second part, and continue in use and occupation of the party of the second part until they shall again be in default as aforesaid, when the same rights, privileges, and remedies shall be restored to and continue alike effectual and operative.

And it is hereby mutually covenanted and agreed that either party shall and will at any time execute and deliver any further or different release, acquittance, assurance, conveyance, or instrument, necessary or essential to a complete and effectual carrying into effect the true intent and design of the foregoing covenants, agreements, or conveyances, or any of them.

In witness whereof, the parties hereto have caused these presents to be signed by the presidents of the respective parties, for and on behalf of and in the name of the parties hereto, who are thereto duly authorized and empowered the day and year first above written.

La Crosse and Milwaukee Railroad Company,
(Signed) By STEPHEN CLARK, *President.*

Madison, Fond du Lac and Michigan Railroad Company,
(Signed) By S. L. ROSE, *President.*

In presence of—
ALEX. OSTRANDER.
JOHN LEWIS.

STATE OF NEW YORK, *City and County of New York:*

On this 26th day of December, 1857, before the subscriber, a commissioner in and for said State, appointed by the governor of Wisconsin, to take the acknowledgment and proof of execution of deeds, and of other writings to be used or recorded in the said State
216 of Wisconsin, appeared the within signed Stephen Clark, as president of the La Crosse and Milwaukee Railroad Company, and S. L. Rose, president of the Madison, Fond du Lac, and Michigan Railroad Company, each personally known to me to be the identical persons whose names are hereunto subscribed, and severally acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal [SEAL] the day and year first above written.

(Signed) ALEX. OSTRANDER,
*Commissioner for Wisconsin*, 111 *Broadway, New York.*

And whereas certain and sundry of the covenants and agreements in said indenture, dated December 24th, 1857, have been performed; and whereas it is difficult and burdensome to the party of the first part, and will be attended with great expense and loss to perform certain of the covenants on its part in said indenture contained:

Now, at the suggestion of the party of the first part, the party of the second part has agreed to, and does hereby release and discharge the party of the first from its agreements to convey the Portage division, so called, or any portion thereof, to the second party, and to remove any charges, liens, or incumbrances therefrom, and hereby releases and surrenders to the party of the first part the said Portage division, and all rights and property therein and thereto pertaining, and the grant of land connected therewith. In consideration whereof the said party of the first part agrees to and with the said party of the second part to, and does hereby, release the said party of the second part from all covenants and agreements in said indenture on its part contained to be performed, and from the payment of any other monies, either principal or interest, or any bond or other obligation or liability not already performed and paid, and forever acquits and releases all rights, powers, and remedies thereunder, except for the performance of the covenants of the said second party to pay the first mortgage bonds on the Watertown division for three hundred and ten thousand dollars, the two hundred thousand dollars Milwaukee city bonds, and the one hundred and eighteen thousand dollars third mortgage or construction bonds, so chargeable on said Watertown division, and the claims of D. C. Jackson for forty-eight thousand dollars, and the claims of S. & C. Howard, which said several sum and liabilities so above excepted, and none other, are to continue to stand assumed by the party of the second part, and chargeable to said second party; and all other rights and powers of the said first party in the premises are hereby released, surrendered, and relinquished, and all claim by the second party for damage for the nonperformance by the party of the first part of any covenants relating to said Portage division is released, relinquished, and discharged.

The above mutual releases and relinquishments, acquittances
217 and surrenders, are in consideration of mutual covenants, releases, acquittances, and surrenders, and of the premises above recited.

In testimony whereof, these presents have been executed by or on behalf of the respective parties this 20th day of December, A. D. 1858, and their corporate seals are hereto attached, by order of their respective boards of directors.

{ MILWAUKEE, WATERTOWN & BARABOO VALLEY RAILROAD COMPANY SEAL, WISCONSIN. }

Milwaukee, Watertown, & Baraboo Valley Railroad Company,
By S. L. ROSE, *Pres't.*

{ LA CROSSE & MILWAUKEE RAILROAD COMPANY SEAL. }

La Crosse & Milwaukee Railroad Co.,
By N. P. STANTON, *President.*

In presence of—
ORIN ROOT, Jr.
L. E. SCHUYLER.

Sealed and delivered by and on behalf of the La Crosse & Milwaukee Railroad Company in presence of—
EDWARD WADE.
WM. E. CORNWELL.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On this 24th day of December, A. D. 1858, before me personally appeared S. L. Rose, president of the Milwaukee, Watertown & Baraboo Valley Railroad Company, to me well known to be such president, and the person who executed the foregoing instrument in writing, and acknowledged that he, in behalf of said company, executed said instrument as the free act and deed of said Milwaukee, Watertown & Baraboo Valley Railroad Co., for the uses and purposes therein mentioned.

{ SEAL OF ORIN ROOT, JR., NOTARY PUBLIC, MILWAUKEE CO., WIS. }

ORIN ROOT, JR.,
*Notary Public,*
*Milwaukee Co., Wis.*

THE STATE OF NEW YORK,
*Albany City and County, ss:*

Be it remembered that on this first day of January, in the year eighteen hundred and fifty-nine, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgement and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in said State of Wisconsin, personally appeared N. P. Stanton, president of the La Crosse & Milwaukee Railroad Company, to me well known to be such president, and the person who, for and on behalf of the said railroad company, executed the foregoing instrument in writing, and he, as

such president, acknowledged to me that he, in behalf of said company, executed the said instrument as and for the act and deed of the said La Crosse & Milwaukee Railroad Company. And I further certify that the said N. P. Stanton, being at the same time by me
218 being duly sworn, did depose and say that he was the president of the said La Crosse & Milwaukee Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the said instrument in writing was such corporate seal; that it was so affixed by the order of the board of directors of the said company, and that he signed his name thereto by like order as president of said company, and that the execution of the said instrument in and on behalf of said company was the free and voluntary act and deed of said company, and that the said company, by him as such president, acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein stated.

In witness whereof, I have hereunto set my hand and hereto affixed my official seal this first day of January, A. D. 1859.

{ EDWARD WADE, COMMISSIONER. SEAL. }

EDWARD WADE,
*Commissioner of the State of Wisconsin*
*In and for the State of New York.*

*Deed to Mad., Fond du Lac, and Mich. R. R. Co.*

LA CROSSE AND MILWAUKEE RAILROAD COMPANY to the MADISON, FOND DU LAC, AND MICHIGAN R. R. CO.

*Deed.*

This indenture, made this twenty-fourth day of December, eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, party of the first part, and the Madison, Fond du Lac, and Michigan Railroad Company, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one million of dollars, to the said party of the first part paid, has bargained, sold, assigned, set over, aliened, and confirmed, and by these presents does bargain, sell, assign, set over, and confirm, unto the party of the second part, the Watertown division of the railroad of the party of the first part, being that portion of said road and line of road situated, lying, and being in the State of Wisconsin, and in and between the city of Milwaukee and (by the way of Watertown and Columbus) to the intersection of the said line with the line of railroad of the party of the second part, in the county of Columbia, not distant, however, more than six miles from the present town of Columbus, together with all and singular the right of way, depot grounds, embankments, bridges, culverts, superstructures and tracks, machinery, equipments, rolling stock, engines, tenders, locomotives, cars, tools, implements, machine shops, repair shops, and tools therein or thereto belonging, station houses, storehouses, water tanks, and all other things or matters thereto in anywise appertaining or belonging, real estate, personal estate, or mixed estate, together with all rights, privileges, franchises, and im-
219 munities, to have, hold, use, occupy, operate, and enjoy the

same, with all the profits, emoluments, earnings, and income to be produced thereby or derived therefrom, forever, so far as the same belongs and appertains to that portion of said line of road, or so much thereof as is above described; and hereby fully authorizing and empowering the said party of the second part to immediately enter into and upon the said road, and all portions of said line, and do and perform any and all such lawful acts as the party of the first part might do in the building, finishing, equipping, repairing, and operating of the said road and line of road above described, (whether now constructed or to be constructed,) or in the procuring right of way, depot grounds, and all other things necessary or proper to be done.

Hereby covenanting with the said party of the second part that the party of the second part shall have, possess, use, own, and enjoy the same in quietude and peace to the said party of the second part or assigns forever; subject, however, as part of the purchase price, to the following charges, liens, and incumbrances thereon, and none other, to wit: a mortgage or mortgage bonds on that portion of said road east of Watertown, to the amount of three hundred and ten thousand dollars, called first mortgage.

Also to a mortgage on the portion of said road last above described to the city of Milwaukee for the sum of two hundred thousand dollars, given to said city by the Milwaukee and Watertown Railroad Company as collateral to the bond of said last-named company to indemnify said city for an issue or issues of two hundred thousand dollars of its bonds to said last-named company, to aid in the construction of its road.

Also subject to unpaid bonds to the amount of one hundred and eighteen thousand dollars, issued by said last-named company, which are also secured by a mortgage of that portion of said road last aforesaid. Also to the provision of two certain contracts for running connections made by the Milwaukee and Watertown Railroad Company with the Milwaukee and Mississippi Railroad Company, and another with the Watertown and Madison Railroad Company, respectively and severally.

Also subject to a portion of a mortgage for the sum of one million of dollars, made by the La Crosse and Milwaukee Railroad Company, bearing date September 1st, 1857, and incumbering the eastern division of the La Crosse and Milwaukee railroad, from Milwaukee, by way of Beaver Dam, to Portage City, and also that portion of the Watertown division aforesaid between Watertown and Midland; which portion of said mortgage that this conveyance is made subject to being hereby fixed and stipulated at the sum of two hundred and eighty-three thousand dollars, which shall hereafter, at all times, be taken, deemed, and declared as the amount of said mortgage justly chargeable upon said line so hereby conveyed, with interest proportionate thereon, to be paid from time to time as the same matures, (both principal and interest,) by the party of the second part, upon the bonds issued by the first party, and secured by said last-mentioned mortgage; and the remainder is to stand only and exclusively chargeable upon the said eastern division, and be paid and

discharged in manner aforesaid, by the first party and, the party of the second part saved harmless therefrom.

And the said party of the first part covenant and agrees with the said party of the second part to defend, protect, and at all times save harmless the said party of the second part from any and all other debts, charges, mortgages, incumbrances, judgments, and liens of every kind and nature, except those above excepted and specified, and to the extent fixed above, and procure all such (if any) to be released, discharged, cancelled, and satisfied.

In consideration whereof, the said party of the second part hereby covenants and agrees with the said party of the first part to receive, and does hereby receive, this conveyance, subject to the charges, liens, incumbrances, and liabilities as above expressed and stipulated, both as to principal and interest, and none other, and to defend and protect the said party of the first part from the payment of any monies, the foreclosure of any mortgages, or from being in any manner charged and made liable in the premises than as above expressed and stipulated, and fully to indemnify and save harmless the said party of the first part from any and all such liabilities as the said party of the first part may have assumed or become in any manner liable to and chargeable with on account or by reason of the incumbrances, contracts, or liabilities aforesaid, to the amount of and as herein above expressed and limited.

And the said party of the second part further covenants and agrees to and with the said party of the first part to perform and fulfil all such engagements, contracts, and agreements, made and entered into with either of the towns of Columbus, Fountain, Prairie, and Hamden, by the Milwaukee and Watertown Railroad Company, in consideration of the issue of the bonds of said towns, severally, to the Milwaukee and Watertown Railroad Company, for which the party of the first part has become liable to and chargeable with the fulfillment and performance of, in consequence of the consolidation of the said last-named railroad company with the party of the first part, and to save the first party harmless and fully indemnified therefrom and against.

And the party of the first part further covenants and agrees that it will sell, and by usual and needful instruments in writing convey, to the party of the second part, all that portion of its line of road called the Portage division, being so much of said line as is situated in, and lying in and between the city of Madison and the junction of said Portage division, with the eastern division of said La Crosse and Milwaukee railroad, at or near the city of Portage City, together with all right of way, depot grounds, embankments, culverts, bridges, and superstructures, so far the same have been constructed, together with all franchises, immunities, privileges, and all other things and matters in anywise pertaining to the same; and hereby author-
221 izing the exercise, and assuming all the rights and powers of the parties of the first part, to the party of the second part in relation thereto, together with the proportionate share or portion of the public lands granted to the party of the first part by the State of Wisconsin, to aid in the construction of said last-mentioned line of

road, being six sections to each mile of said division, to be selected and set apart for the use of the party of the second part, in manner following, that is to say: After the party of the first part shall have received such portion of such public lands as it shall be entitled to for the construction of its road from Portage City to the junction, the party of the second part may, as their work progresses, receive such quantity as it may or shall be entitled to from lands next westerly from those conveyed to the La Crosse and Milwaukee Railroad Company, applicable to their finished line, under the provisions of this contract and the grant made by the State; and the conveyance shall be made in pursuance hereof, from any or all lands to which the party of the first part then is, or will, or may at any time become entitled from such grant; and the lands so received, as the work progresses, shall be retained, and from time to time conveyed to the party of the second part, as it may from time to time become entitled thereto, which shall be upon the same terms and conditions prescribed by law for their conveyance to the party of the first part.

In consideration whereof, the party of the second part agrees to assume the duties and obligations imposed upon the party of the first part by law in relation to said division, and to complete and construct the said road from Madison to Portage City, as aforesaid, within such time as shall be necessary and essential to a compliance with the duty of the party of the first part to the State of Wisconsin. And the party of the first part shall make such conveyance whenever any legal disability (if any now exist) shall be removed by proper legislative enactment or authority so to do. And the party of the first part shall cause all such charges and incumbrances or liens as they shall have placed or shall be upon the said Portage division to be removed and discharged from their effect and charge on such division, or may, at the time of such conveyance, deliver to the party of the second part an amount of first and second mortgage bonds on said division proportioned to the amount of each issued upon said line from Madison, by way of Portage City, to St. Croix, as the length of the Portage division shall bear to the whole length of the land grant line of said party of the first part, or that portion of it which shall be built.

Such delivery of bonds may be made by depositing such bonds with proper trustees, to be agreed upon by the parties hereto, (and in case of disagreement to be appointed by the supreme court of the State of Wisconsin, thirty days' written notice given to either by the other party,) who shall deliver such bonds to the party of the second part, as the work progresses, proportionately, until the work is done;
222 and until all bonds are so delivered, and until such mortgage and liens are so discharged, or such bonds so deposited, the party of the second part shall not be required to proceed with the construction of the said Portage division, and shall not be deemed in default for such delay, but may proceed with the work or not, in their discretion. But the party of the first part shall cause such discharges and releases to be made, or such bonds to be so deposited, in time to enable the party of the second part to comply with the requirements of the law in the construction of such division.

And in consideration of the foregoing contracts, covenants, and

conveyances, the party of the second part hereby further covenant and agree that they will assume, and do hereby assume, the liability and obligations of the contract for the construction of the said Portage division made by the first party with Darius C. Jackson, and to save the said first party harmless from all monies and payments due, or to grow due thereon under or by virtue of said contract, and to do and perform all matters and things to be done, and still remaining undone, under such contract, either for or on account of work done and performed, or to be done and performed, or damages for unfulfillment on the part of the said party of the first part

And the party of the second part further agrees to pay to S. & C. Howard all such sums as shall be due, or to become due, on account of work done by them on said Portage division, under contract of D. C. Jackson, and save the first party harmless therefrom.

And the party of the first part hereby releases and discharges a contract entered into between the parties hereto guarantied by S. L. Rose, dated in or about the month of December, 1856, for the receipt and return of twenty-four thousand dollars of farm mortgage bonds by the party of the second part, and such contract is to be satisfied and surrendered herewith, and all claims and demands against said party of the second part on account thereof are hereby released and discharged; and all claims for aid from the party of the first to the party of the second part, in the construction of three miles of the road of said second party next to Beaver Dam, are hereby released and declared fully satisfied.

And the party of the second part further agrees to pay all taxes due and payable to the State of Wisconsin on account of earnings on any portion of road or line hereby contracted to be conveyed, hereafter to accrue.

And it is hereby further agreed by the party of the second part that in case the said party of the second part shall make default in the payment of any interest, principal, or sinking fund to become due on any mortgage debt hereby assumed by said second part, and shall continue in default for the space of twenty days, then in that case the party of the first part may revoke and may declare null this indenture, and all things herein contained, except as hereinafter stated; and may proceed to demand, and shall be entitled to recover, immediate possession of all the property of every name and description hereby
223 and herein sold and conveyed, or agreed to be sold and conveyed; and the party of the second part agrees to surrender peaceably into the possession of the said party of the first part the same, without hindrance, delay, or resistance; but after receiving such surrender and possession, the party of the first part shall proceed to foreclose the right and interest of the party of the second part in and to the same, by notice of not less than six months, in not less than two newspapers of most general circulation published in the city of Milwaukee, and like notice in the city of New York; and may, upon such notice, make absolute and complete foreclosure and extinguishment of all the rights and interests of the party of the second part in and to the premises and property hereby conveyed and contracted to be conveyed, and become pur-

chasers thereof, or may sell and convey to other parties, as in other cases of foreclosure, rendering the surplus (if any) above the amounts due or to grow due and costs and expenses to the party of the second part.

The party of the second part receives this conveyance and contract to convey subject to all unsatisfied claims for right of way, and subject to the liabilities of the party of the first part in a lease to D. C. Freeman, under which he is now, or has recently been, operating said Watertown division.

And the said party of the second part agrees to receive and hold all earnings of the road, over and above current expenses for repairing and operating the same, in trust for the second part, so far as necessary, and to keep the same deposited as it accrues, with some responsible and reliable banking-house, to the credit of a responsible trustee, to be by the second party from time to time appointed, and cause the same to be paid over to the party of the first part, at least ten days before the same shall at any time become due, to be paid by the party of the second part for interest on the said sum of two hundred and eighty-three thousand dollars, chargeable on that portion of said division west of Watertown, and to pay all other principal and interest hereby assumed to the parties entitled to the same when due.

And the party of the first part hereby sells, assigns, and sets over unto the party of the second part its interests and rights, legal and equitable, in and to any contracts, agreements, leases, and engagements, made and entered into by the party of the first part, or its predecessors, for the benefit or use of or in any manner affecting said Watertown division, so far as the same may affect said Watertown division; the interest to be paid by the party of the second part is to be equal to the amount hereafter to accrue on said liabilities hereby assumed.

And it is hereby agreed that, in case the said first party shall come into possession of the property aforesaid, that the affairs of said road shall be conducted and the road operated with all proper economy and prudency, and whenever the nett receipts shall be sufficient, or whenever the party of the second part, or its assigns, shall furnish an amount, including such net receipts, (if before such final sale,)
224 to pay up, satisfy, and discharge any and all sums so due and in arrears on such assumed liabilities, then the right of possession, use, and occupation by the said party of the first part shall cease, and the said property shall be surrendered to the party of the second part, and continue in use and occupation of the party of the second part, until they shall again be in default as aforesaid, when the same rights, privileges, and remedies shall be restored to and continue alike effectual and operative.

And it is hereby mutually covenanted and agreed that either party shall and will, at any time, execute and deliver any further, other, or different release, acquittance, assurance, conveyance, or instrument necessary or essen- to a complete and effectual carrying into effect the true intent and design of the foregoing covenants, agreements, or conveyances, or any of them.

In witness whereof, the parties hereto have caused these presents to be signed by the presidents of the respective parties, for and on behalf of and in the name of the parties hereto, who are thereto duly authorized and empowered the day and year first above written.

La Crosse and Milwaukee Railroad Company,
(Signed) By STEPHEN CLARK, *President.*

Madison, Fond du Lac, and Michigan Railroad Company,
(Signed) By S. L. ROSE, *President.*

In presence of—
ALEX. OSTRANDER.
JOHN LEWIS.

STATE OF NEW YORK,
*City and County of New York:*

On this 26th day of December, 1857, before the subscriber, a commissioner in and for said State, appointed by the governor of Wisconsin to take the acknowledgment and proof of execution of deeds, and of other writings to be used or recorded in the said State of Wisconsin, appeared the within signing Stephen Clark, as president of the La Crosse and Milwaukee Railroad Company, and S L. Rose, president of the Madison, Fond du Lac, and Michigan Railroad Company, each personally known to me to be the identical persons whose names are hereunto subscribed, and severally acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal the day and year first above written.

(Signed) ALEX. OSTRANDER,
*Commissioner for Wisconsin*, 111 *Broadway, New York.*

*Articles of org'n of the Milwaukee & Minnesota R. R. Co.*

Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the twenty-first day of June, A. D. 1858, duly executed to William Barnes a mortgage deed for the purpose of securing the pay-
225 ment of bonds to the amount of two millions of dollars, with the interest coupons attached, which was recorded in the office of the secretary of state of the State of Wisconsin in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, A. D. 1858:

And whereas, also, the said La Crosse and Milwaukee Railroad Company, on the eleventh day of August, A. D. 1858, duly executed to the said Barnes a supplementary mortgage, or trust deed, for the purposes aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin in the book of railroad mortgages, on pages 349 to 361, inclusive, on the first day of September, A. D. 1858, whereby all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse in said State, a distance of about two hundred miles, constructed and to be constructed; and also all the railroad of said com-

pany, commencing in the village of Madison, in said State, and running from thence, by the way of Portage City, to the St. Croix river or lake in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed; and also all the railroad of said company commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built and to be built and constructed by said company, or which they have a right to construct, by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted, or might thereafter constitute, or be a part of, or appertain to said railroads, and including, also, all and singular the lots, land, and real estate whatsoever, which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made, or thereafter to be made, thereon; and all rights of dockage and wharfage, and all other riparian rights, and privileges, and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads built, or thereafter to be built and constructed; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description procured, or thereafter to be procured, for or used in said railroads, and all the materials, tools, implements, and utensils, and other personal
226 property procured, or thereafter to be procured, for or used in connection with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description; and also all and singular the lands granted, or intended to be granted, to said La Crosse and Milwaukee Railroad Company, under or by virtue of the act of Congress approved June 3rd, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled an act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3rd, 1856," together with all and singular the hereditaments and appurtenances belonging to, or in anywise appertaining to, the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature,

owned wholly or in part by said railroad company, on such day as the said railroad company might first make default in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company, under said trust deeds or mortgages, and all the property, real, personal, and mixed, of said railroad company, then acquired and vested, or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin, fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to said Barnes, to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds, with the interest thereon secured by said mortgage deeds:

And whereas, by said trust or mortgage deeds it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons, accompanying the said bonds, as they respectively became due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then, and in either of said cases, the said Barnes as trustee was authorised in his discretion to enter into and take possession of all and singular the railroads and all the other property, real, personal, and mixed, covered or conveyed, or
227 intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and secure the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and franchises of said railroad company, covered and conveyed or intended to be covered or conveyed by said mortgage deeds, either at public or private sale. And, also, that on the written request of the holder or holders of said bonds, then outstanding to the amount in the aggregate of one hundred thousand dollars, he should proceed to make such sales and conveyances for the purpose of paying the outstanding bonds and the interest thereon; but in case of any sale at auction, it was provided that notice of such intended sale should be published once in each week, for three weeks at the least, in two newspapers published in the city of New York and in a newspaper published in the city of Milwaukee, and that on such sale the said Barnes should execute and deliver to the purchaser or purchasers deeds and conveyances, which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the undersigned trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof:

And whereas the interest which became due on the first day of January, A. D. 1859, upon the bonds issued by said company, secured by the mortgage deeds aforesaid, amounting to about the sum of seventy thousand dollars, was not paid by said company when it

became due, and said company having made default in such payment for the space of more than fifteen days; and whereas, also, holders of said outstanding bonds, amounting in the aggregate to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the said trustee should proceed to make such sale and conveyances as aforesaid:

And whereas, also, the said trustee, in conformity to the provisions of said trust or mortgage deeds, has duly published notice of such intended sale once in each week for three weeks in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee in the State of Wisconsin, which notice of sale was given for the twenty-sixth day of March, A. D. 1859, at the court-house in the city of Milwaukee, at twelve o'clock noon of that day:

And whereas said sale was on the said twenty-sixth day of March, A. D. 1859, duly adjourned and postponed to the twenty-third day of April, A. D. 1859, at twelve o'clock noon of said day, at the same place, which adjournment was duly advertised once in each week for three weeks in said newspapers. And whereas said sale was again, on the said twenty-third day of April, A. D. 1859, duly adjourned to the twenty-first day of May, A. D. 1859, at twelve o'clock noon of that day, at the same place, which last adjournment was
228 duly advertised once in each week for three weeks in said newspapers:

And whereas the said sale was on said last-mentioned day duly made as provided in said trust or mortgage deeds, and William Barnes, the said trustee, became the successful bidder and purchaser at such sale in trust for the bondholders, in conformity to the laws of the State of Wisconsin and the provisions of an act approved by the governor of said State on the ninth day of February, A. D. 1859, entitled, "An act supplemental to chapter seventy-nine of the Revised Statutes entitled, "of railroads, for the price or sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, being seventy-five per cent. of the amount due for principal and interest on the bonds outstanding and secured by said deeds, or thereabouts, be the same more or less, he, the said William Barnes, trustee as aforesaid, being the highest and best bidder at such sale:

Now, therefore, this indenture witnesseth, that the said William Barnes, purchaser as aforesaid, does hereby acknowledge, testify, and declare, that his title acquired by the said purchase to the railroads, appurtenances, franchises, and property, particularly described in the mortgage or trust deeds to him executed by the said La Crosse and Milwaukee Railroad Company, as above recited, was taken and is held by him in trust for the holders of the bonds secured by the said mortgage or trust deeds.

And the said William Barnes, as such purchaser in trust, as aforesaid, and the holders of said bonds who execute these presents, associates of the said William Barnes, do hereby, in pursuance of the statute in that case made and provided, proceed to organize anew and elect directors, and provide for the distribution and disposal of stock

under the name hereafter mentioned in that behalf, under the charter of the said La Crosse and Milwaukee Railroad Company, with the variations in manner and form of organization required by their altered circumstances and better convenience, and for that purpose do hereby adopt and establish the following articles of organization:

ARTICLE ONE. For the purposes aforesaid, the parties hereto do hereby organize themselves anew as a corporation or body corporate under the name of the Milwaukee and Minnesota Railroad Company, by the corporate name to have, possess, exercise, and enjoy, all the corporate or other rights, powers, privileges, and franchises, granted to or conferred upon the La Crosse and Milwaukee Railroad Company aforesaid by the several acts of the legislature of the State of Wisconsin following, to wit: An act to incorporate the La Crosse and Milwaukee Railroad Company, approved on the second day of April, 1852; and all acts of the said legislature amendatory of or supplemental to the said act, and all other acts of the said legislature now in force relating to or binding upon the said La Crosse and
229 Milwaukee Railroad Company, and particularly "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled, "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," "*appeared* June 3, 1856, which said last-mentioned act of the said legislature was approved on the eleventh day of October, A. D. 1856; and all acts amendatory of or supplemental to said last-mentioned act, and by chapter seventy-nine of the Revised Statutes of the said State, entitled, "of railroads," and every other general law of the said State in that behalf made and provided; subject to all duties, restraints, and liabilities, created or imposed by law upon the said La Crosse and Milwaukee Railroad Company, and upon railroads in the said State generally, so far as the same may be applicable.

ARTICLE TWO. The said William Barnes, for and in consideration of the premises above recited, doth hereby grant, bargain, sell, convey, transfer, assign, set over, and confirm unto the said Milwaukee and Minnesota Railroad Company all and singular the railroads, appurtenances, franchises, and property, real and personal, rights and choses in action of whatever name or description herein above mentioned, and more particularly described in the above mentioned mortgages or trust deeds, as fully as if the same were herein particularly set forth and described, and all the right, title, and interest of him, the said William Barnes, therein or thereto vested in him by the said mortgages or trust deeds, and by the said sale and purchase thereunder, to have and to hold the same unto the said Milwaukee and Minnesota Railroad Company, their successors and assigns, for their sole use forever.

ARTICLE THREE. The capital stock of the said Milwaukee and Minnesota Railroad Company is hereby fixed at the sum of "two and a half million of dollars, divided into twenty-five thousand shares of one hundred dollars each, with liberty, nevertheless, to the said Milwaukee and Minnesota Railroad Company to increase the said capital

stock, under and in conformity to the laws of the said State, to a sum not exceeding five millions of dollars.

ARTICLE FOUR. The stockholders of the said Milwaukee and Minnesota Railroad Company are the holders of the said bonds, secured by the said mortgages or trust deeds, for whose benefit the said sale and purchase was made by the said William Barnes, and such other persons as shall hereafter associate themselves with them by subscription to the said capital stock or other proper means.

Each holder of the said bonds, upon surrendering his bonds to the proper officer of the said Milwaukee and Minnessota Railroad
230 Company, shall be entitled to receive a certificate of stock in the company hereby organized of an equal amount with the principal of the bonds so surrendered by him, subject, nevertheless, to the payment in money of the pro rata share of the costs, charges, and expenses of the said sale and of this organization, and of carrying the same into effect, being the proportion of the whole of such costs, charges, and expenses as the amount of stock so to be issued shall bear to two millions of dollars.

ARTICLE FIVE. The payment of the said pro rata share of such costs, charges, and expenses is hereby declared to be a charge and lien upon the stock to which each holder of the said bond is entitled; and the board of directors of the said Milwaukee and Minnessota Railroad Company shall have power to declare the right to such stock forfeited by the non-payment of such pro rata share of such costs, charges, and expenses, in such manner as the said board of directors shall determine.

ARTICLE SIX. The board of directors of the said Milwaukee and Minnessota Railroad Company shall consist of nine persons, and the following persons are hereby appointed and elected directors of the said company, and shall constitute the first board of directors of the said Milwaukee and Minnessota Railroad Company, and shall hold their offices as such until the last Wednesday of May next, (1859,) and thereafter until their successors are duly elected in their place: Russell Sage and Ludlow A. Battershall, of Troy, New York; William Gould, of Albany, New York; William B Gilbert, of Syracuse, New York; Hans Crocker, Norman J. Emmons, and Lemuel W. Weeks, of Milwaukee, Wisconsin; William R. Sill, of La Crosse, Wisconsin; and William E. Smith, of Fox Lake, Wisconsin.

The directors hereafter to be elected shall be so elected in pursuance of the provisions of law regulating the election of directors of the said La Crosse and Milwaukee Railroad Company.

ARTICLE SEVEN. The said board of directors shall meet at the office of the said Milwaukee and Minnessota Railroad Company on this day, and proceed to elect and appoint the officers of the said Milwaukee and Minnessota Railroad Company, and provide for a corporate seal.

ARTICLE EIGHT. These articles are executed in duplicate, both duplicates executed by the said William Barnes, and by the holders of a majority of the said bonds, setting opposite to their names and seals the amount of bonds respectively held by them. When one of the said dupplicates shall have executed by the holders of a majority of said bonds it shall be sent for record to the office of the secretary

of state of the said State, and the other duplicate shall be re-
231 tained in the office of the said Milwaukee and Minnessota Railroad Company for further execution by the holders of said bonds, and when so further executed, may be in like manner recorded in the office of the said secretary of state.

ARTICLE NINE. The organization of the said Milwaukee and Minnessota Railroad Company is hereby declared to be complete in fact.

In witness whereof, the said William Barnes and the bondholders whose names are under written, have hereto set their hands and seals at the city of Milwaukee, in the State of Wisconsin, on the twenty-third day of May, in the year one thousand eight hundred and fifty-nine.

WILLIAM BARNES. [SEAL.]

| | | |
|---|---|---|
| Russell Sage, | $80,000 | [L. S.] |
| L. D. Coman, | 24,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| L. A. Battershall | 50,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| R. Pardow, jr | 20,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| L. H. Buell | 18,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| H. G. Gilbert | 50,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| Roscius R. Kennedy | 75,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| Alfred Noxon | 17,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| George F. Gray | 20,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| J. M. Lovett | 50,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| S. H. Alden | 30,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| William Gould | 50,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| J. F. Frost | 3,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| William Watson | 56,500 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| Eli King | 40,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| J. Templeton | 5,000 | [L. S.] |
| 232 By RUSSELL SAGE, his att'y. | | |
| S. R. Foster | 20,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| A. Fleming | 20,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |
| George W. McLean | 10,000 | [L. S.] |
| By RUSSELL SAGE, his att'y. | | |

| | | |
|---|---|---|
| *Stoddard Judd*, trustee | $544,950 | [L. S.] |
| E. Cramer | 5,500 | [L. S.] |
| Ax. Mitchell | 6,000 | [L. S] |
| C. Hawley | 7,400 | [L. S.] |
| William B. Gilbert | 30,000 | [L. S] |
| John W. Davis | 20,000 | [L. S.] |
| William R. Sill | 500 | [SEAL.] |
| H. Crocker | 500 | [SEAL.] |
| R. S. Kneeland | 3,800 | [SEAL.] |
| H. H. Whitlock | 1,900 | [SEAL.] |
| By R. S. KNEELAND, his att'y. | | |
| John C. Denison | 300 | [SEAL.] |
| By R. S. KNEELAND, his att'y. | | |
| J. H. Whitlock | 1,000 | [SEAL.] |
| By R. S. KNEELAND, his att'y. | | |
| H. Beckwith | 300 | [SEAL.] |
| By R. S. KNEELAND, his att'y. | | |
| Nathan Parker | 200 | [SEAL.] |
| By R. S. KNEELAND, his att'y. | | |
| F. Sassinguth | 400 | [SEAL.] |
| By R. S. KNEELAND, his att'y. | | |
| W. E. Smith | 500 | [SEAL.] |
| William Barnes | 10,000 | [L. S.] |
| E. G. Ryan | 9,500 | [SEAL.] |
| John S. Rockwell | 22,000 | [SEAL] |

Sealed and delivered in our presence by William Barnes, Russell Sage, L. D. Coman, L. A. Battershall, R. Pardow, jun'r, L. H. Buel, H. G Gilbert, Roscius R. Kennedy, Alfred Noxon, George T. Gray, J. M. Lovett, S. H. Alden, William Gould, J. F. Frost, William Watson, Eli Kelly, J. Templeton, S. R. Foster, A. Fleming, and George W. McLean, by Russell Sage, their attorney; Stoddard Judd, E. Cramer, Alexander Mitchell, C. Hawley, W. B. Gilbert, John W. Davis, William R. Sill, H. Crocker, R. S. Kneeland, H H. Wheelock, John C. Dennison, J. H. Wheelock, H. Beckwith, Nathan Parker, and J. Sassurgarth, by R. S. Kneeland, their attorney; W. E.
233 Smith, William Barnes, E. G. Ryan, and John S. Rockwell.

JAS. G. JENKINS, *Milwaukee.*
HENRY SANDES, *Milwaukee.*

STATE OF WISCONSIN, *County of Milwaukee, ss:*

On this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me personally came William Barnes, Russell Sage, and Russell Sage, attorney for L. D. Coman, L. A. Battershall, R. Pardow, jr., L. H. Buell, H. G. Gilbert, Roscius R. Kennedy, Alfred Noxon, George T. Gray, J. M. Lovett, S. H. Alden, William Gould, J. F. Frost, William Watson, Eli Kelly, J. Templeton, S. R. Foster, A. Fleming, and George W. McLean, Stoddard Judd, E. Cramer, Alexander Mitchell, C. Hawley, W. B. Gilbert, John W. Davis, William R. Sill, H. Crocker, R. S. Kneeland, and R. S. Kneeland, as attorney for H. H. Wheelock, John C.

Dennison, J. H. Wheelock, H. Beckwith, Nathan Parker, and F. Sussurgurth, W. E. Smith, William Barnes, E. G. Ryan, and John S. Rockwell, to me known to be the same persons described in, and who executed, the foregoing instrument, and severally acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-third day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.]

JAS. G. JENKINS,
*Notary Public, Milwaukee co., Wis.*

*Duplicate A.*

STATE OF WISCONSIN, *Secretary's office, ss:*

Received for record, May 24th, A. D. 1859, at 9 o'clock a. m., and recorded in book of railroad mortgages, on pages 404 to 410, inclusive.

J. D. RUGGLES,
*Ass't Sec'y of State.*

*Exhibits of S. Chamberlain.*

The District Court of the United States for the district of Wisconsin.

GREENE C. BRONSON AND JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN, AND OTHERS.

234 It is hereby stipulated and agreed between the complainants, by their solicitors, and the defendant, Selah Chamberlain, that the originals of the several instruments, copies of which are hereunto annexed, are to be treated as proven on the part of the said defendant, Chamberlain, and that such copies may be read in evidence on the hearing the same as the originals might were they produced and proven before a master in a reference or commission for that purpose, viz:

An instrument of lease or mortgage, executed by the La Crosse & Milwaukee Railroad Company to said Chamberlain, bearing date the twenty-sixth day of September, 1857, copy of which is annexed, marked A.

Also a contract between same parties, bearing same date, copy of which is annexed and marked B.

Also a contract or agreement between same parties, bearing date the eighth day of December, 1857, copy of which is annexed and marked C.

Also report of Sill and Woodward, referees, made in pursuance of said last-mentioned agreement, and copy of which is annexed and marked D.

Also an instrument of assignment from Newcomb Cleveland to

James B. Cross, bearing date the second day of March, 1859, copy of which is annexed and marked E.; and it is further admitted and agreed that the judgment referred to and assigned by the original of said paper E remains and is of record in the district court of the United States for the district of Wisconsin.

It is further admitted and agreed that, on the second day of October, 1857, a judgment was rendered in the said district court, and where the same now remains and is of record, in favor of the said Chamberlain, and against the La Crosse & Milwaukee Railroad Company, for the sum of six hundred and twenty-nine thousand eighty-nine dollars and seventy-two cents, besides costs, and the production of copies or exemplification of the records of either of the judgments above referred to is waived, unless said Chamberlain may see fit, which he may do at the hearing.

The said Chamberlain will produce, at the request of complainants, the originals of the documents and papers herein referred to.

Also a deed from Jacob A Hoover and wife to said Chamberlain, dated February 18th, 1859, copy of which is annexed and marked F, dated January 7th, 1861.

THOMAS L. OGDEN,
*Sol. for Comp't.*

A.

Articles of agreement made and entered into by and between the La Crosse & Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the
235 undertakings and agreements of the said party of the second part, hereinafter contained, hereby sells, conveys, to the said party of the second, all its personal property of every name, kind, and description, in the State of Wisconsin, except all such personal property as is used in, and is appurtenant to the operation of the Watertown division of the La Crosse & Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can conveniently be done. And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith, or appurtenant thereto, together with all estate, rights, privileges, and

appurtenances, and franchises connected therewith or belonging or incident thereto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse & Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said 30th day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair; and that the said party of the second part shall receive, and appropriate in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it should be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment for the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current expenses of keeping said railroad and rolling stock in good and thorough repair, and all the costs and expenses of operating the said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part
236 a correct statement exhibiting the total receipts and income of said railroad from all sources during the next preceding month, also the cost and expenses during such month of rolling stock purchased and of keeping said railroad and rolling stock in repair, and the cost and expense of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expense of rolling stock and repairs and of operating, and that he will at any time, on demand of said company, or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company authorized by said company to do so shall, at any time, have the right to examine the accounts of said party of the second part relating to the repair of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expense of repairs and operating, as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1st. To the payment of all coupons hereafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 6, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1, 1857.

2nd. To the payment of all coupons hereafter to become due on one hundred fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3d. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the thirteenth day of July, A. D. 1854.

4th. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of said railroad company, secured by mortgage or deed of trust on the railroad of said company, from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of A. D. 1857.

5th. Whatever balance of said net receipts as aforesaid shall
237 remain after the payment of said coupons and sinking fund shall be applied by said party of the second part in payment of the amount due or hereafter to become due to him by virtue either of a certain contract between said parties, dated January 20, 1857, a supplemental contract between said parties, dated April 30th, 1857, or a certain contract between said parties, dated November 20th, 1856, or of a certain contract modifying said contracts entered into between said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New Lisbon and La Crosse, which is to be paid for from the means of said company other than said income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the net earnings of the said railroad such sum as by the terms and conditions of the aforesaid contracts for the construction of said railroad, bearing date, respectively, November 20, 1856, January 20, 1857, April 30, 1857, and the one entered into simultaneously herewith, he is, or shall be entitled to receive, or whenever, at any time, the party of the first shall pay to him any balance which at such time he shall be entitled to receive according to the terms and conditions of the said contracts, that he will surrender up to said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatever kind or description connected therewith or appurtenant thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith or belonging thereto or incident thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed, or consumed in the construction or operation of said railroad, and that he will convey and deliver to said party of the first part all personal

property which shall have been acquired for said railroad in pursuance of this contract or with the means derived from the receipts from said railroad, and that he will, at such time, deliver on the line of said railroad to said party of the first part fifteen thousand cords of wood, and that whenever the said party of the second part shall have received, as aforesaid, such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

238

In witness whereof, the said party of the first part hath caused these presents to be signed by its president and secretary, and its corporate seal to be hereto affixed, and the same are signed by the said party of the second part.

[SEAL.] (Signed) La Crosse & Milwaukee Railroad Company,
By BYRON KILBOURN, *President.*

JACKSON HADLEY, *Secretary.*

S. CHAMBERLAIN.

Signed, sealed, and delivered in presence of—
(Signed) H. L. PALMER.
T. W. BEAVER.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Be it remembered that on this 26th day of September, in the year one thousand eight hundred and fifty seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who, being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of the said company, and was affixed thereto by their authority, and that he, as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
*Notary Public, Milwaukee County.*

B.

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland, and State of Ohio, party of the second part, *witnesseth:*

That the said parties have mutually undertaken and agreed to and with each other that the contract entered into between the said parties for the construction of the western division of the La Crosse and

Milwaukee railroad from Portage City to La Crosse, excepting
239 the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties and bearing date the 30th of April, A. D. 1857, shall be, and the same are hereby, modified as follows, viz:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch and by the first day of December next.

The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two last-named points as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same, in cash or monthly estimates, according to the terms and stipulations of the aforesaid contracts.

The contract entered into by and between said parties on the 20th day of November, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, it is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power and cars so used shall be a part of that specified in a contract between said parties, entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall, for all balasting which he shall do after the 30th day of September, A. D. 1857, specified in said contract, and for all other ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension, and by loss on teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses in the operation and management of said railroad, as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay the party of the second part the liquidated sum of two hundred thousand dollars, which sum is mu-
240 tually agreed upon by said parties as an equivalent for the aforesaid considerations.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall

be made out of the amount due to said party of the second part on the 30th day of September, 1857, under and by virtue of the said contracts of January 20, 1857, April 30, 1857, and November 20, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first party, and on the first day of every month thereafter, the said party of the second part shall charge the said party of the first part with the amount which shall be due under and by virtue of either of said contracts, or of this contract, in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad, by virtue of the said contract of lease entered into simultaneously with these presents. It is further agreed between the said parties that on the 1st day of July, 1858, and on the 1st day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be *shall be* computed up to the day of making up such account, at the rate of twelve per centum per annum.

It is further agreed between the said parties that whatever sum shall hereafter become due to said party of the second part, for any work done in the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Co.,
[SEAL ] (Signed) By BYRON KILBOURN, *Pres't.*
JACKSON HADLEY, *Sec'y.*
S. CHAMBERLAIN, [SEAL.]

C.

Memorandum of agreement made the eighth day of December, in the year eighteen hundred and fifty-seven, between the La Crosse & Milwaukee Railroad Company, of the one part, and Selah Chamberlain, of the other part, witnesseth:

Whereas, on or about the second day of October last past the
241 said Selah Chamberlain obtained and perfected in the district court of the United States for the district of Wisconsin a judgment against the said railroad company for the sum of six hundred and twenty-nine thousand one hundred and five dollars, or thereabouts, which judgement was obtained and perfected upon a promissory note and warrant of attorney for confession of judgment accompanying the same, executed by said company to said Chamberlain; and whereas the

consideration of said judgment was the alleged balance due from said company on the first day of October last to said Chamberlain for work, labor, and material furnished by him, and to and for said company, under certain contracts for ballasting, repairing, and constructing different divisions of said railroad, and for extra work, labor, and material by him furnished, done, performed in and about the work, and services contemplated in said contracts; and whereas since said judgment was confessed and entered up, as aforesaid, a new board of directors of said company has been elected and new executive officers appointed, and since which time, also, some of the creditors of said company have uttered complaints and charged that said judgment was in whole or in part without consideration, and legal proceedings have been commenced by creditors other than said Chamberlain, wherein it is sought to impeach said judgment for fraud and collusion, and as having been created without consideration in whole or in part; and whereas some of the individuals comprising said new board of directors and executive officers are ignorant of the real state of accounts between said Chamberlain and said company, on said first day of October, and of the facts whether said sum was in reality and in truth due to him at that date:

Now, therefore, in consideration of the premises, the said Selah Chamberlain has agreed and does hereby agree to enter into a new accounting with the said railroad company, with a view of ascertaining the real and true amount due said Chamberlain on the said first day of October, and to which and the said company may, if the directors see fit, cause the entire work claimed for by said Chamberlain to be re-estimated by or under the direction of the present chief engineer of said company and such other competent and disinterested engineer as the parties hereto may agree upon, such new accounting, and all necessary to be done to accomplish the same, shall be had and done within six months from the date hereof, or these presents to stand void and of no effect whatever.

This agreement is not intended to effect, and shall not in the least modify or effect, any contract or agreements heretofore entered into or made between said Chamberlain and said company; but, on the contrary, this agreement is entered into with the sole object and
242 intent of ascertaining the amount due to said Chamberlain as aforesaid on said first day of October for work, labor, services, and materials.

If, upon such new accounting upon the basis aforesaid, it shall be ascertained and determined that less than the sum expressed in said judgment was due to said Chamberlain, as aforesaid, the said judgment shall be reduced or satisfied to the extent or sum of such excess, said judgment to stand and remain meanwhile, and be in nowise impaired or effected by this agreement, otherwise than as the amount due thereon may be effected or determined by the result of suchnew accounting.

If, upon such new accounting upon the basis aforesaid, it shall be ascertained and determined, that more than the sum expressed in said judgment was actually due to said Chamberlain on said first day of October, the excess shall constitute and be a lawful claim or demand against said company, and shall be allowed to said Chamberlain in

future estimates under his contract for the construction of said railroad to La Crosse.

La Crosse and Mil. R. R. Co.,
By STEPHEN CLARK, *President.*
SELAH CHAMBERLAIN.

D

*To the board of directors of the La Crosse and Milwaukee Railroad Co:*

GENTLEMEN: We, the undersigned, having been appointed to make new estimates of the work done up to October 1st, 1857, on the line of your road from Portage City to La Crosse, by Selah Chamberlain, under contract dated January 20th, 1857, and April 30th, 1857, and also under certain stipulations for ballasting the same, respectfully report, that in accordance with a contract made on the 8th day of December last, for a remeasurement of the work done on that portion of the road, we have carefully examined each of the several items of work performed, aided by the original notes and cross sections of the work, and by such new measurements and examinations as were necessary to correctly estimate the value of the work performed under and in accordance with the stipulations of the above-named contracts, and the following is the result, viz:

| | | |
|---|---|---|
| 43 miles main line, as per contract, *a* $12,000 per mile, | | 516,000 00 |
| $2\frac{32}{100}$ " side track " " " " " | | 27,810 00 |
| Grading, bridging, and masonry, proportionably equal in value to | | 151,900 00 |
| Extra, as per contract on earth hauled over 500 feet | | 27,537 30 |
| Grubbing and clearing, proportional, *a* $300 per mile, | | 18,620 00 |
| Solid rock excavation, 118,537 c. yd's, *a* 7 c | | 88,917 75 |
| 243 Loose " " 2,400 " " " 50 c. | | 1,200 00 |
| Roadways, bridges, cattle passes, and changing highways, extra | | 11,700 00 |
| Excavations of foundations and timber in same | | 6,500 00 |
| Bank wall 3,500 c. y., *a* $3 00 per c. y | | 10,500 00 |
| Tunnel approach excavation, 73,957[3] c. y., *a* $2 pr. c y. | | 147,914 60 |
| Pile bridging | | 2,500 00 |
| Tunnel culvert at Kilbourn City | | 2,300 00 |
| Ballasting 45 $\frac{32}{100}$ miles, *a* $2,000 pr. mile, as pr. stipulation | | 90,640 00 |
| Grading depot grounds at Kilbourn City | | 973 20 |
| Damage for detention and change of line at New Lisbon, | | 1,121 00 |
| Making total | | 1,106,163 85 |
| Deductions for work unfinished at that date, but estimated in above, being track laying, ballasting, and grading | | 62,000 00 |
| | | 1,044,163 85 |

MILWAUKEE, *March 25th*, 1858.
WM. R. SILL, *Civil Engineer.*
E. W. WOODWARD, *Chief Engineer.*

E.

This indenture, made the second day of March, eighteen hundred and fifty-eight, between Newcomb Cleveland, of Waukegan, in the State of Illinois, of the one part, and James B. Cross, of the city and county of Milwaukee, and State of Wisconsin, of the other part.

Whereas the said Newcomb Cleveland did, on the third day of October, in the year eighteen hundred and fifty-seven, recover, by judgment in the district court of the United States for the district of Wisconsin, against the La Crosse and Milwaukee Railroad Company the sum of one hundred and eleven thousand seven hundred and twenty-seven dollars and seventy-one cents for his damages, besides costs taxed in said suit at the sum of five hundred and forty-four dollars and fifteen cents, as by the record thereof now remaining in said court may appear:

Now, this indenture witnesseth, that for and in consideration of the sum of one hundred and twenty-four thousand and five dollars and forty-nine cents to him, the said Newcomb Cleveland, in hand paid by the said James B. Cross, the receipt whereof is hereby acknowledged, he, the said Newcomb Cleveland, hath granted, bargained, sold, assigned, transferred, and set over unto the said James B. Cross, his executors, administrators, and assigns, the said judgment so recovered, as aforesaid, against the said La Crosse and Milwaukee Railroad Company, and all the benefit and advantage, sum and sums of money that may be had, obtained, or gotten by reason or means of the said judgment, or any proceedings heretofore had and instituted, or to be had thereupon. And the said Newcomb Cleveland does hereby
244 covenant with the said James B. Cross that no part of the said judgment, or of the interest or costs thereon, has been paid.

And the said Newcomb Cleveland does hereby authorize and empower the said James B. Cross, and his representatives or assigns, in the name of the said Cleveland, or otherwise, to demand, sue for, recover, receive, and enjoy the moneys due and to be due, as aforesaid, and for that purpose to avail himself of any proceedings heretofore instituted by said Cleveland, or otherwise. But this assignment is made and taken in all other respects at the risk of the said James B. Cross and his assigns, who is to collect the same at his own expense, and not to subject the said Newcomb Cleveland to the payment of any costs or charges whatever.

N. CLEVELAND. [L. S.]

In presence of—
H. M. FINCH.

F.

This indenture, made the eighteenth day of February, eighteen hundred and fifty-nine, between Jacob A. Hoover and Eveline C., his wife, parties of the first part, and Selah Chamberlain, of Cleveland, in the State of Ohio, party of the second part, witnesseth: That whereas the said Jacob A. Hoover, by a contract bearing date the

seventh day of June, one thousand eight hundred and fifty-eight, entered into between him, of the one part, and the La Crosse & Milwaukee Railroad Company, of the other part, for the consideration therein named of four thousand dollars, of which sum one thousand dollars thereof was paid by said company upon the delivery of said contract, and the balance thereof, by the terms of said contract, was to be paid the one-half thereof in six months from the date thereof, with interest at the rate of ten per cent. per annum, and the balance thereof in twelve months from the date thereof, with like rate of interest, bound himself, his heirs, executors, and administrators, upon the payment of said sum of three thousand dollars, with the interest, at the times and in the manner above specified, to execute and deliver to the La Crosse and Milwaukee Railroad Company, or their legal representatives, a good and sufficient deed, in fee simple, in the law, of the premises hereinafter described, free and clear of all legal liens and incumbrances, except the taxes, special or general, which might be assessed on the said premises after the date of said contract; and whereas the said the La Crosse and Milwaukee Railroad Company failed to pay the said sum of three thousand dollars, or any part thereof, or the interest thereon, and the said Jacob A. Hoover instituted legal proceedings and obtained an injunction from the circuit court of the county of Milwaukee, in the State of Wisconsin, enjoining the said railroad company and all other persons from using said premises for the purposes of the road of said company; and whereas the said Selah Chamberlain, said party of the second part hereto, is in possession of the said railroad, and requires the said lot and the im-
245 mediate use thereof in connection with said road, and for that purpose and object has, at the date hereof, paid to the said party of the first part hereto the sum of three thousand two hundred and ten dollars and eighty two cents, the balance of said purchase money of said premises, with the interest thereon to this date, and the sum of twenty-five dollars and seventy cents, the costs of said injunction proceedings:

Now, therefore, in consideration of the premises and of the said sum of three thousand two hundred and thirty six dollars and fifty-two cents, to the parties of first part hereto in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, the said parties of the first part have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey, and confirm, unto the said party of the second part hereto, his heirs and assigns forever, the tract, piece, or parcel of land in said contract mentioned, and known and described as that certain lot or piece of land situated in the six ward of the city of Milwaukee, on the west side of the river, in the county of Milwaukee and State of Wisconsin, known as lot numbered four (4,) in block numbered thirty, (30,) together with all and singular the hereditaments and appurtenances thereunto belonging or appertaining, and all the estate, right, title, interest, claim, or demand of the said parties of the first part, either in law or equity, either in possession or expectancy of, in, and to the above bargained premises and their hereditaments and appur-

tenances. To have and to hold the said premises, as above described, with the hereditaments and appurtenances, unto the said party of the second part hereto, and to his heirs and assigns forever, subject only to the rights of the said the La Crosse and Milwaukee Railroad Company, or their legal representatives, to acquire the title thereto from the said party of the second part, his heirs, executors, administrators, and assigns, under the s'd contract, that they, or any of them, would or might have been entitled by the terms of said contract to have claimed from the said party of the first part hereto but for this conveyance to the said party of the second part hereto, and the assignment of said contract to him by the said party of the first part.

And it is hereby declared that the true intent and object of this conveyance and assignment of the said contract to said Chamberlain is to vest the legal title of said premises in him, so as to remove the said injunction, secure the enjoyment of said lot in connection with said railroad, and invest the said Chamberlain with the securities of said party of the first part for the said unpaid purchase money so advanced and paid by the said Chamberlain to said Hoover.

And the said Jacob A. Hoover, for himself, his heirs, execu-
246 tors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear of all legal liens and incumbrances, except the said contract and the taxes thereon excepted, and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, shall and will forever warrant and defend, except against the claims of any person or persons claiming or to claim under the said contract with the said the La Crosse and Milwaukee Railroad Company, or the taxes therein excepted.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JACOB A. HOOVER. [SEAL.]
EVELINE C. HOOVER. [SEAL.]

Sealed and delivered in presence of—
Z. A. COTTON.
C. H. WALRATH.

STATE OF WISCONSIN,
*County of Milwaukee, ss:*

On this eighteenth day of February, A. D. 1859, personally came before me the above-named Jacob A. Hoover and Eveline C., his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

C. H. WALRATH,
*Notary Public, Mil. Co., Wis.*

*Proceedings in foreclosure of 3rd mortgage.*

Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the twenty first day of June, A. D. 1858, duly executed to the undersigned a mortgage deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons thereto attached, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 342 to 348, inclusive, on the eighth day of July, A. D. 1858.

And whereas, also, the said La Crosse and Milwaukee Railroad Company, on the eleventh day of August, A. D. 1858, duly executed to the undersigned a supplementary mortgage or trust deed for the purposes aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 349 to 361, inclusive, on the first day of September, A. D. 1858, whereby all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, in said State, a distance of about two hundred miles, constructed and to be constructed; and also all the railroad of
247 said company, commencing in the village of Madison, in said State, and running from thence, by way of Portage City, to the St. Croix river or lake, in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed; and also all the railroad of said company, commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any other source or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted, or might thereafter constitute, or be a part of, or appertain to said railroads; and including also all and singular the lots, lands, and real estate whatsoever which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or thereafter to be made thereon, and all rights of dockage and wharfage, and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, built or thereafter to be built and constructed; and also all and singular the locomotive engines and other

rolling stock, and all the other equipments of every kind and description, procured or thereafter to be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, procured or thereafter to be procured for or used in connection with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description, and also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the
248 construction of railroads in said State, approved June 3d, 1856,'" together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, owned wholly or in part by said railroad company, on such day as the said railroad company might first make default in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company under said trust deeds or mortgages, and all the property, real, personal, and mixed, of said railroad company, then acquired and vested or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to the undersigned to be held by him in trust for and as security to the bondholders of said company, for the payment of the said bonds with the interest thereon secured by said mortgage deeds:

And whereas, by said trust or mortgage deeds it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds as they respectively became due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then and in either of said cases the undersigned, as trustee, was authorized in his discretion to enter into and take possession of all and singular the railroads and all the other property, real and personal and mixed, covered or conveyed, or intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and receive the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all

the rights, liberties, privileges, and franchises of said company covered and conveyed, or intended to be covered or conveyed, by said mortgage deeds, either at public or private sale; and also that on the written request of the holder or holders of said bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, the undersigned should proceed to make such sales and conveyances for the purpose of paying the said outstanding bonds and the interest thereon, but in case of any sale at auction it was provided that notice of such intended sale should be published once in each week for three weeks at the least in two newspapers published in the city of Mil-
249 waukee, and that on such sale the undersigned should execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of the undersigned trustee and said railroad company of, in, and to the said property rights, liberties, privileges, and franchises, and every part and parcel thereof:

And whereas the interest that became due on the first day of January, A. D. 1859, upon all of the bonds issued by said company secured by the mortgage deeds aforesaid, amounting to the sum of about seventy thousand dollars, was not paid by said company when it became due, and said company having made default in such payment for the space of more than fifteen days:

And whereas, also, holders of said outstanding bonds, amounting, in the aggregate, to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the undersigned should proceed to make such sales and conveyances as aforesaid, as by their written request hereto annexed will more fully appear:

And whereas the undersigned, the said William Barnes, in compliance with such request, did cause due notice of such sale at auction, signed by the said William Barnes, and bearing date the twenty-fourth day of February, 1859, to be published once in each week for three successive weeks next before the twenty-sixth day of March, A. D. 1859, in the Milwaukee Free Democrat, a daily newspaper published in the city of Milwaukee and State of Wisconsin, and in the New York Times and the New York Daily Tribune, daily newspapers published in the city of New York, in compliance with the provisions of the said mortgage or trust deeds, giving notice that in pursuance of the authority vested in the undersigned by the said mortgage deeds, the undersigned should expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State of Wisconsin, on the twenty-sixth day of March, A. D. 1859, at twelve o'clock a. m. of that day, all and singular the said railroads and real, personal, and other property, of whatsoever nature, covered by said trust deeds, together with all the said rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises of the said La Crosse and Milwaukee Railroad Company which may be included in, covered or conveyed, or intended to be covered or conveyed

by said mortgage deeds in order to pay the said outstanding bonds and interest and the costs and expenses of that sale: And whereas the sale thereby advertised was by the undersigned, on the twenty-sixth day of March, A. D. 1859, postponed and adjourned to the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee aforesaid, and the undersigned did thereupon cause a notice, by him signed, of such
250 postponement and adjournment, and that such sale would accordingly take place on the day and at the place last mentioned, to be published in the said newspapers once a week for three successive weeks immediately preceding the said twenty-third day of April, A. D. 1859: And whereas the sale thereby advertised was by the undersigned, on the twenty-third day of April, A. D. 1859, postponed and adjourned to the twenty-first day of May, A. D. 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee aforesaid, and the undersigned did thereupon cause a notice, by him signed, of such postponement and adjournment, and that such sale would accordingly take place at the day and at the place last mentioned, to be published in the said newspapers once in each week for three successive weeks immedidately preceding the said twenty-first day of May, A. D. 1859, as by printed copies of the said notice of sale and of the said two several notices of adjournment, together with the affidavits of the publication thereof in the said newspapers hereto annexed, will more fully and at large appear: And whereas, on the said twenty-first day of May, A. D. 1859, I, the said William Barnes, the trustee named in the said mortgage or trust deeds, did make the sale of which such notice had been so given in the manner hereinafter certified and declared:

Now, know all men by these presents that I, the said William Barnes, the trustee named in the said mortgage or trust deeds, do hereby certify and declare that, in pursuance of the authority in me vested by the said mortgage or trust deeds, and of the statutes of the State of Wisconsin in such made and provided, and of the said notice and sale, and of the said notices of adjournment and postponement thereof, I, the said William Barnes, trustee as aforesaid, did, on the said twenty-first day of May, A. D. 1859, at twelve o'clock m. of that day, attend at the court-house in the city of Milwaukee, and did then and there read the said notices of sale and of adjournment and postponement thereof, and did thereupon then and there put up for sale, at public auction, upon the steps of the said court-house, and in the presence of many persons then and there assembled, all of the railroads and real, personal, and other property, with all the rights, privileges, and franchises appertaining thereto, and all corporate and other rights, privileges, and franchises of the said La Crosse & Milwaukee Railroad Company included in, covered, or conveyed, or intended to be covered or conveyed by the said mortgage or trust deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of that sale, and that then and there, no other person or body having made any bid for the same, I, the said William Barnes, trustee as aforesaid, did bid for the same the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, being computed to be seventy-five per

cent. of the principal and of the interest on that day actually due on the outstanding bonds issued under and secured by the said
251 mortgage or trust deeds in trust for the holders of such outstanding bonds, in pursuance of the statute in that case made and provided and of the authority in me vested, and that then and there no further or other bid was made at such sale; and that thereupon I, the said William Barnes, having waited a reasonable time until I was satisfied that no higher bid would be made, and having given due notice thereof, did strike off the property so put up for sale to myself, as such trustee, in trust for the holders of the outstanding bonds issued under and secured by the said mortgage or trust deeds, and did publicly, and in the presence of the persons present, declare myself to be the purchaser at that sale of all the property so put up for sale, as such trustee, and upon the trust aforesaid, for the said sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents; and for a more particular description of the property so sold I do hereby annex, as part of this certificate and declaration, a copy of the said mortgage or trust deeds. And I do hereby certify and declare that the property so sold may be redeemed within one year from and after the said date of such sale, to wit, the twenty-first day of May, A. D. 1859, and that the said sale will be absolute unless the said La Crosse & Milwaukee Railroad Company, or some subsequent encumbrances, shall redeem the said railroads and property so sold by paying or depositing the amount of the said bid on the said sale and the costs of said sale, and the interest thereon, at the rate of ten per cent. per annum, with me, as such trustee, together with the value of all substantial and necessary improvements made by me, or those for whom I purchased in trust, whether in the further construction of said railroads or for the better use and enjoyment of the same, with interest thereon at the rate of ten per cent. per annum, within sixty days after the value of such improvements shall have been agreed upon between the parties interested, or determined by three commissioners to be appointed in that behalf by the chief justice of the supreme court, pursuant to the statute in that case made and provided.

In witness whereof, I have hereunto set my hand and seal this thirty-first day of May, in the year one thousand eight hundred and fifty-nine.

WILLIAM BARNES. [SEAL.]

Signed and sealed in the presence of—
JAS. G. JENKINS.
E. G. RYAN.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

William Barnes, named in the foregoing certificate, declaration, and report, being duly sworn, upon oath doth depose and say that the foregoing certificate, declaration, and report is true.

WILLIAM BARNES.

Sworn to before me this 31st day of May, A. D. 1859.

JAS. G. JENKINS,
*Notary Public, Milwaukee Co., Wisconsin.*

252 STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered that on this thirty-first day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me, a notary public in and for the State of Wisconsin, residing in the county of Milwaukee, in said State, personally came William Barnes, to me personally known, and known to me to be the same person described in and who executed the foregoing instrument, certificate, declaration, and report, and acknowledged to me that he executed the same freely and voluntarily.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Milwaukee, this thirty-first day of May, in the year of our Lord one thousand eight hundred and fifty-nine. [SEAL.]

JAS. G. JENKINS,
*Notary Public, Milwaukee Co., Wisconsin.*

Whereas, under and by virtue of a trust deed or mortgage executed by the La Crosse and Milwaukee Railroad Company to William Barnes, dated June 21st, A. D. 1858, and recorded in the office of the secretary of state of the State of Wisconsin, in book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858, and of a supplementary trust deed or mortgage executed by the said company to said Barnes on the 11th day of August, A. D. 1858, and recorded in the said office on the 1st day of September, 1858, in said book of railroad mortgages, pages 349 to 361, inclusive, it was provided, in substance, that in case default should at any time be made in the payment of the interest or principal on any of the outstanding bonds issued under said mortgages, then, and in either of said cases, said Barnes, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, should proceed to make the sales and conveyances of the property, real, personal, and mixed, and of the rights, franchises, privileges, &c., covered and conveyed by said trust deeds or mortgages: Now, therefore, we the undersigned holders and owners of such outstanding bonds, in the various sums set opposite our respective names, do hereby request William Barnes, the said trustee, to proceed and make such sales and conveyances as provided in said trust deeds or mortgages, either by advertisement or foreclosure, by suit in such manner as he may deem expedient. And we do hereby also request said Barnes to become the purchaser, on such sale or sales, in trust for the bondholders, at the sum of seventy-five per cent. of the amount of outstanding bonds and unpaid interest thereon, issued and registered under said trust deeds and mortgages, or at any such higher sum, not exceeding the full amount of all of said outstanding bonds and the unpaid interest thereon, in conformity to the provisions of the
253 act passed by the legislature of Wisconsin approved by the governor on the 8th day of February, A. D. 1859, entitled an "Act supplemental to chapter 79 of the Revised Statutes, entitled of railroads." And we, the undersigned, in consideration of the premises, do hereby severally promise and agree with said Barnes

to pay him, and also to indemnify and save him harmless from all costs, charges, damages, and losses, of whatsoever name or nature, which he may incur or become liable for in prosecuting, making, or defending such foreclosure and sale, and the proceedings and steps incident or necessary thereto, in proportion to the amount of said bonds held by us respectively.

FEBRUARY 11th, 1859.

| Names. | Amounts. |
|---|---|
| Russell Sage | 80,000 |
| Alex. Mitchell | 6,000 |
| S. L Rose | 25,000 |
| Wm. E. Cramer | 7,500 |
| Cyrus Hawley | 7,400 |
| C. Hawley, ex'r estate of F. W. Hawley | 3,000 |
| H. J. Nazro & Co. | 3,000 |
| H. Ludington & Co. | 1,300 |
| Wm. P. Lynde, administrator of estate of C. K. Watkins | 16,000 |
| E. Cramer | 5,500 |
| John Cramer, by E. Cramer, his att'y | 1,000 |
| Joseph Cary | 1,200 |
| A. F. Snelflohn | 800 |
| Caswell & Gaylord | 2,000 |
| A. B. Van Cott | 1,000 |
| Chas. Schley | 8,000 |
| John S. Rockwell | 22,000 |
| Geo. F. Gray | 20,000 |
| J. N. Lovett | 20,000 |
| J. S. Rogers, president Rogers' Locomotive Works | 7,000 |
| L. D. Coman | 14,000 |
| A. Fleming | 20,000 |
| G. W. McLean | 10,000 |
| Tracy R. Edson | 900 |
| Nezial Wright | 200 |
| W. H. Peckham | 10,000 |

STATE OF WISCONSIN,
*County of Milwaukee, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper
254 once in each week for four consecutive weeks, commencing on the 24th day of February, A. D. 1859, and ending on the 24th day of March, A. D. 1859. L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me. CHAS. C. PAINE,
*Notary Public, Milwaukee Co., Wisconsin.*

Advertisement 7. Whereas the La Crosse & Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the 21st day of June, A. D. 1858, duly executed to the undersigned a mortgage deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons thereto attached, which was recorded in

Advertisement 8. the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858; and whereas, also, the said La Crosse & Milwaukee Railroad Company, on the 11th day of August, 1858, duly executed to the undersigned a supplementary mortgage or trust deed, for the purpose aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 349 to 361, inclusive, on the 1st day of September, 1858, whereby all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, in said State, a distance of about two hundred miles, constructed and to be constructed, and also all the railroad of said company commencing in the village of Madison, in said State, and running from thence, by way of Portage City, to the St. Croix river or lake, in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed, and also all the railroad of said company commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatever; including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted, or might thereafter constitute, or be

Advertisement 9. a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said company owned or might thereafter acquire, by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or thereafter to be made thereon, and all rights of wharfage and dockage,

255 and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, built or thereafter to be built and constructed, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, procured or thereafter to be procured for, or used on said railroads, and all the materials, tools, implements, and utensils, and

other personal property, procured or thereafter to be procured for or used in connection with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse & Milwaukee railroad Company of every kind and description; and also all and singular the lands granted or intended to be granted to said La Crosse & Milwaukee Railroad Company under and by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse & Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,'" approved June 3d, 1856, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatever nature, owned wholly or in part by said railroad company, on such day as the said railroad company might first make default in the payment of the principal or interest, which might thereafter become due on any of the said bonds issued by said company under said trust deed or mortgages; and all the property, real, personal, and mixed, of said railroad company, then acquired and vested or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin, fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to the undersigned, to be held by him, in trust for, and as security to, the bondholders of said company for the payment of the said bonds, with the interest thereon secured by said mortgage
256 deeds; and whereas, by said trust or mortgage deeds, it was provided that, if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds, as they respectively became due, or if default for the like period should be made in the payment, at maturity, of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then, and in either of said cases, the undersigned, as trustee, was authorized, in his discretion, to enter into and take possession of all and singular the railroads and all the other property, real, personal, and mixed, covered or conveyed, or intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and receive the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and franchises of said railroad company, covered and conveyed, or intended

Advertisement 10.

Advertisement 11.

to be covered and conveyed, by said mortgage deeds, either at public or private sale; and also that on the written request of the holder or holders of said bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, the undersigned should proceed to make such sales and conveyances for the purpose of paying the said outstanding bonds and the interest thereon; but in case of any sale at auction, it was provided that notice of such intended sale should be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and that on such sale the undersigned should execute and deliver to the purchaser or purchasers deeds and conveyances, which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the undersigned trustee, and said railroad company, of, in, and to the said property, rights, privileges, liberties, and franchises, and every part and parcel thereof:

Advertisement 12.

And whereas the interest that became due on the 1st day of January, 1859, upon all the bonds issued by said company, secured by the mortgage deeds aforesaid, amounting to the sum of about seventy thousand dollars, was not paid by said company when it became due, and said company having made default in such payment for the space of more than fifteen days; and whereas, also, holders of said outstanding bonds, amounting, in the aggregate, to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the undersigned should proceed to make such sales and conveyances as aforesaid:

Now, therefore, notice is hereby given that, in pursuance of the authority vested in the undersigned by said mortgage deeds, I shall expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State, on the
257 twenty-sixth of March, A. D. 1859, at 12 o'clock m. of that day, all and singular the said railroad, and real, personal, and other property, of whatsoever nature, covered by said trust deeds, together with all the said rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises of said La Crosse and Milwaukee Railroad Company which may be included in, covered or conveyed, or intended to be covered and conveyed, by said mortgage deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of this sale.

Advertisement 13.

WILLIAM BARNES, *Trustee.*

Dated Albany, February 24th, 1859.

STATE OF WISCONSIN,
*Milwaukee County, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week for four successive weeks, commencing on the 31st

day of March, A. D. 1859, and ending on the 21st day of April, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
*Notary Public, Milwaukee Co., Wis.*

[Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin, "Advertisement 7, 8, 9, 10, 11 12, 13," with this addition, namely:

"The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee, in the State of Wisconsin.

"Dated Milwaukee, March 26th, 1859.

"WILLIAM BARNES, *Trustee.*"]

STATE OF WISCONSIN,
*Milwaukee County, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspapor published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week for four successive weeks, commencing on the 28th day of April, A. D. 1859, and ending on the 19th day of May, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
*Notary Public, Milwaukee Co., Wis.*

258 [Here follows the same advertisement as is annexed to the first affidavit, of L. L. Crounse and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13," with these additions, namely:

"The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee, in the State of Wisconsin.

"Dated Milwaukee, March 26th, 1859.

"WILLIAM BARNES, *Trustee.*"

"The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the twenty-first day of May, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee, in the State of Wisconsin.

"Dated Milwaukee April 23d, 1859.

"WILLIAM BARNES, *Trustee.*"]

STATE OF NEW YORK,
*City and County of New York, ss:*

M. F. Gale, being duly sworn, saith that he is in the office of the "New York Times," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Times four times, once each week successively, commencing on the 24th day of February, 1859.

M. F. GALE.

Sworn to before me this 25th day of May, 1859.

J. O. HARGER,
*Commissioner of Deeds, &c., New York.*
R. A. WATKINSON.
*Comm'r for Wisconsin.*

[Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13.]

STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered that on the 25th day of May, 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord 1859.

[SEAL.]

R. A. WATKINSON,
*Commissioner, &c., 20 Nassau St.*

STATE OF NEW YORK,
*City and County of New York, ss:*

M. F. Gale, being duly sworn, saith that he is foreman in the office of the "New York Times," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regu-
259 larly published in the said New York Times four times, once each week successively, commencing on the 31st day of March, 1859.

M. F. GALE.

Sworn to before me this 25th day of May, 1859.

J. O. HARGER,
*Commissioner of Deeds, &c., New York.*
R. A. WATKINSON,
*Comm'r for Wisconsin.*

[Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "advertisement 7, 8, 9, 10, 11, 12, 13," with this addition, namely:

"The above sale is postponed to Saturday, April 23d, same hour and place.]

WILLIAM BARNES,
*Trustee.*

STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds, and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.]

R. A. WATKINSON,
*Commissioner, &c., 20 Nassau st.*

STATE OF NEW YORK,
*City and County of New York, ss:*

M. F. Gale, being duly sworn, saith that he is foreman in the office of the "New York Times," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Times four times, once each week successively, commencing on the 28th day of April, 1859.

M. F. GALE.

Sworn to before me, this 25th day of May, 1859.

J. O. HARGER,
*Commissioner of Deeds, New York.*
R. A. WATKINSON,
*Commissioner for Wisconsin.*

[Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "advertisement 7, 8, 9, 10, 11, 12, 12, 13," with these additions, namely:

"The above sale is postponed to Saturday, April 23d, same hour and place.

WILLIAM BARNES,
*Trustee.*

MILWAUKEE, *March* 26, 1859.

"The above sale is further postponed to Saturday, May 21st, 1859, same hour and place.

WILLIAM BARNES,
*Trustee.*]

MILWAUKEE, *April* 25, 1859.

260 STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds, and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINSON,
*Commissioner, &c.*, 20 *Nassau st.*

STATE OF NEW YORK,
*City and County of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune once a week, five weeeks successively, commencing on the twenty-fourth day of February, 1859.

THOMAS N. ROOKER.

Sworn to before me, this 25th day of May, 1859.

R. A. WATKINSON,
*Commissioner for Wisconsin.*

[Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "advertisement 7, 8, 9, 10, 11, 12, 13.]

STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds, and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed to the annexed affidavit,

who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINSON,
*Commissioner, &c., 20 Nassau st.*

STATE OF NEW YORK,
*City and County of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York; that the advertisement hereto annexed
261 has been regularly published in the said New York Daily Tribune once a week, four weeks successively, commencing on the thirty-first day of March, 1859.

THOMAS N. ROOKER.

Sworn to before me, this 25th day of May, 1859.

ROBERT H. STUBERGH,
*Commissioner of Deeds, &c., New York.*
R. A. WATKINSON,
*Commissioner for Wisconsin.*

[Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13, with this addition, namely: "The above sale is adjourned to the twenty-third day of April, A. D. 1859, at the same hour and place."

WILLIAM BARNES, *Trustee.*]

Dated MILWAUKEE, *March 26th* 1859,

STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner, resident in said city, commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINSON,
*Commissioner &c., 20 Nassau st.*

STATE OF NEW YORK.
*City and County of New York, ss.*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune once a week, four weeks, Thursdays, successively, commencing on the twenty-eighth day of April, 1859.

THOMAS N. ROOKER.

Sworn to before me, this 27th day of May, 1859.

ROBERT A. STEBERGH,
*Commissioner of Deeds, &c.*
R. A. WATKINSON,
*Comm'r for Wisconsin.*

[Here follows the same affidavit as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "advertisement 7, 8, 9, 10, 11, 12, 13, with these additions, namely: "The above sale is adjourned to the twenty-third day of April, A. D 1859, at the same hour and place.

"WILLIAM BARNES, *Trustee.*

"Dated MILWAUKEE, *March 26th*, 1859.

"The above sale is further adjourned to the twenty-first day of "May, A. D. 1859, at the same hour and place.

"WILLIAM BARNES, *Trustee.*]

"Dated MILWAUKEE, *April 23d*, 1859"

262 STATE OF NEW YORK,
*City and County of New York, ss:*

Be it remembered that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority, and under the laws of the State of Wisconsin, to take the ackowledgment of deeds, and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of my office on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

R. A. WATKINS,
*Commissioner &c., 20 Nassau street.*

Copy trust deed—Deed or mortgage.

*Trust Deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and

Milwaukee Railroad Company, a corporation created by the legislalature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA, *State of Wisconsin.*

No.——. $.——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of ——— dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its [L. S.] corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *Secretary* ——— ———, *President.*

Registered and countersigned this——— ———, 185 .

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine houses, workshops, depots and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools,
263 implements, and utensils and other personal property which have been or may hereafter be procured for or used in connection with said railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortage of about two hundred thousand dollars on the road from Portage City to La Crosse,

and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold, all and singular, the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed. *First.* Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made. *Second.* In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned. *Third.* Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee, all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more

effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid. *Fourth.* Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing except as herein provided. *Fifth.* This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any monies which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of, in, and to the trust property.

*Sixth.* Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

*Seventh.* And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars. With such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this
264 deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

*Eighth.* The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection; nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

*Ninth.* All moneys which may be received by the trustee under

trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

*Tenth.* The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

*Eleventh.* Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its [SEAL.] corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse & Milwaukee Railroad Company.
By N. P. STANTON, *President*,
LOCKWOOD L. DOTY, *Secretary of the La Crosse & Milwaukee Railroad Company.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B. COCHRANE.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse & Milwaukee Railroad Company.

EDWARD P. WHALING,
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany:*

Be it remembered that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as afore-

said, freely, for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
*Commissioner of the State of Wisconsin in and for the State of New York.*

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes
265 acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
*Commissioner of the State of Wisconsin in and for the State of New York.*

STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely, and as the free act and

deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL] E. MARINER,
*Notary Public, Milwaukee County, Wisconsin.*

Recorded July 8th, 1858, at 8 o'clock a. m.

Copy of Supplementary Trust or Mortgage Deed.

*Schedule B.*

Indenture, made the eleventh day of August, one thousand eight hundred and fifty eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached, as aforesaid, which land thus selected in lieu of those sold and to which pre-emption has attached, as aforesaid, together with

the sections and parts of sections designated by odd numbers, as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid. *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads. *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever. *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no otner, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road, respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct. *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same. Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,'

approved June 3d, 1856." The people of the State of Wisconsin, represented in Senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete and perpetually to have, use, maintain, and operate railroads, with one or more tracts or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise and enjoy the same
267 rights, privileges, functions, franchises, authority and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads which may cross, come up to or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies. *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms. *And provided, also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able to mutually agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought,

and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin, to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company. *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected; and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever. *And provided, further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever any such twenty miles are completed, so as to admit running regular trains of cars over the same; and the governor of the State shall in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled. *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on from time to time, so that the sales of

lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the
208 United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of the said company and other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal or mixed, and the lien hereby secured by the State shall take and have prece-

dence of all demands, decrees and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal or mixed, held by said company, and necessary for the operation of said railroad; and said lands, granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from all taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues which may accrue to the State from said corporation, as herein provided, which lien of the State shall take precedence of all demands, judgments or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft, as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has, prior to the passage of this act, acutally surveyed or located its line of railroad, it shall be the duty of the La

Crosse and Milwaukee Railroad Company to settle with such railroad company, upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy; and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person, and the three persons so selected shall
269 constitute a board of commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof or as is in this act provided, is hereby declared to be taken for public use so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital; and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount

subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock. And in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount by deducting such sums as may be necessary, pro rata, from each of the several subscriptions; and all of the shares of stock so subscribed shall be subject to calls for installments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of said last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21st, A. D. 1858, between said company, of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas, also, the said La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds, as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property,

real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence
270 to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given, to said La Crosse and Milwaukee Railroad Company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turnouts, engine houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, part of the first part, does hereby covenant, grant, bargain, promise, and agree, to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises, above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations, lawfully claiming or to claim the same or any part thereof, subject,

nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successor and his heirs and assigns forever

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

*First.* Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

*Second.* In case default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall
271 be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction notice of such intended sale shall be published once in each week, *for three weeks* at the least, in twonewspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be *required by the laws of the State of Wisconsin, the same shall be given.* And in case default shall at any time be made in the payment of the interest on any of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred

thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

*Third.* Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things, as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

*Fourth.* Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

*Fifth.* The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment; nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, granted, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provis ons, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.] La Crosse & Milwaukie R. R. Company.

La Crosse & Milwaukie Railroad Company,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukie Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukie Railroad Campany.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

272 STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely, for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. — Third street, in the city of Milwaukee, the day and year above written. [SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
*Notary Public, Milwaukee County, Wisconsin.*

STATE OF WISCONSIN,
*County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing, as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. — Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
*Notary Public, Milwaukee County, Wisconsin.*

STATE OF NEW YORK,
*County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto; and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
*Commissioner of the State of Wisconsin in and for the State of New York.*

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

*Appearance.*

February 16, 1861.—This day came Messrs. Smith and Solomon, and entered their appearance for the defendant, E. Bradford Greenleaf. And came the defendant, G. W. Chapman, and entered his appearance. And Messrs. Butler, Buttrick & Cottrill entered their appearance for the defendants, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, and Henry L. Simonds, and consent that a decree may be made pursuant to the prayer in the bill. And Messrs. Finches, Lynde & Miller appear for the defendant, James Wolstenholme, and consent that a decree may be made pursuant to the prayer in the bill. And Mr. H. E. Paine appears for the defendants,
273 Frederick Lind, Sebastian Knetzger, and August Lauthof, and consent that a decree may be made pursuant to the prayer in the bill. And Mr. E Mariner appears for the defendants, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, and consents that a decree may be made pursuant to the prayer in the bill. And Messrs. Hooker & Spangenberg appear for the defendant, Nathaniel S. Bouton, and consent that a decree may be made pursuant to the prayer in the bill. And the defendant, Conrad Wellauer, appears and consents that a decree may be made pursuant to the prayer in the bill.

*Pro confesso.*

And came the complainants, by their counsel, and on their motion it is ordered by the court that the complainants' bill of complaint be and hereby is taken as confessed as to the *the* defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Brodhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Edwin Townsend, Charles Quentin, John H. Tesch, Byron Kilbourn, the Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M. Davis, for their having failed to plead, answer, or demur thereto.

February 19, 1861.—Receiver's report for the month of January, 1861, filed.

*Reference to masters.*

March 11, 1861.—This day came the complainants, by their counsel, and the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, Ephraim Mariner, the Milwaukee and Minnesota Railroad Company, who answered by John S. Rockwell, and A. Fleming, by their several counsel, and the Milwaukee, Watertown, and Baraboo Valley Railroad Company, by its counsel. And on due consideration of the bill taken as confessed as aforesaid, and of the pleadings, proofs, and arguments of counsel of these parties, it is ordered by the court that reference be and hereby is made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report the amount of

interest due and unpaid on the bonds and mortgage described in this bill, and the real amount of said bonds; and in computing said interest, they deduct therefrom the amount received by the complainants through Prentiss Dow, their agent, of net revenues of the road and property of the company covered by the mortgage; and for this purpose they shall state an account of receipts and disbursements, and require said Dow to produce his books and be examined under oath as to all things pertaining thereto; and they may take additional testimony to that on file.

And the said masters shall ascertain and report the amounts of the several judgments of Newcomb Cleveland, Sebre Howard, and of Graham & Scott, and whether lots sold under the execution issued on the judgment of Sebre Howard are or are not covered by this mortgage.

And it is further ordered, that the said masters report the amount of the several specific claims of Selah Chamberlain, and also an
274 account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and that they may examine the said Chamberlain under oath, and require him to produce his books; and they may also take additional testimony to that on file.

And it is further ordered by the court that the said masters ascertain and report the whole amount of rolling stock on the whole road, and that they specify the quantity thereof that is covered by and included in the first mortgage, and also in this mortgage, and in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp.

*Docket entries.*

March 11, 1861.—Receiver's report for month of February, 1861, filed.

March 21, 1861.—Ordered by the judge that Increase A. Lapham, be and hereby is appointed a special master in this case in the place of Joshua Hathaway, who declined serving.

April 17, 1861.—Receiver's report for month of March, 1861, filed.

April 22, 1861.—Ordered by the judge that the receiver pay twenty-eight thousand eight hundred and one dollars and ninety-two cents, ($28,801 92,) being the interest and costs of the judgment of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Company to this date.

May 13, 1861.—Receiver's report for month of April, 1861, filed.

June 15, 1861.—Receiver's report for month of May, 1861, filed.

July 13, 1861.—Receiver's report for month of June, 1861, filed.

July 18, 1861.—Ordered that there be disbursed by the receiver, out of the proceeds of the road, a sum not exceeding fifty-three thousand dollars in the purchase of such locomotive engines and freight cars as, in his opinion, the increasing business on the road may require.

August 14, 1861.—Receiver's report for month of July, 1861, filed.

Sept'ber 7, 1861.—This day came Edwin C. Litchfield, by his counsel, Messrs. Emmons, Van Dyke & Hamilton, and presented his petition in writing, and herein filed, setting forth that he recovered a judgment against the La Crosse & Milwaukee Railroad Company, defendant, in this court, and praying that he may be permitted to become a party defendant hereto, and to file his answer, and that he may have such other relief in the premises as may be agreeable to equity, which said petition is as follows:

275 *Petition of E. C. Litchfield.*

District court of the United States of America for the district of Wisconsin—In equity.

Petition of Edwin C. Litchfield, in the matter of the suit of—

JAMES T. SOUTTER and GREEN C. BRONSON, trustees,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

*To the judge of the district court of the United States for the district of Wisconsin.*

Your petitioner, Edwin C. Litchfield, a resident of the city of New York, and a citizen of the State of New York, respectfully shows unto your honor, that on the 5th day of October, 1858, he recovered a judgment against the La Crosse and Milwaukee Railroad Company, in the district court of the United States for the district of Wisconsin, for the sum of $26,332 75, damages, and $20 76, costs; that said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated; that there is actually and equitably due upon said judgment the sum of $26,353 $\frac{51}{100}$ *dollars*, together with interest thereon from the 5th day of October, 1858, over and above all just claims by way of offset or otherwise.

Your petitioner further shows unto your honor, that the complainants in the above entitled cause filed their bill in this court against the La Crosse and Milwaukee Railroad Company and others, for the purpose of foreclosing a mortgage against the La Crosse and Milwaukee Railroad Company. Your petitioner also shows that he is not a resident of the State of Wisconsin; that he has not been made a party in the above entitled cause, and has not been served with process therein.

Your petitioner therefore prays that, by an order of this court, he may be permitted become a party defendant in the above entitled cause, and to file his answer therein, and that on the hearing of said cause he may have such relief in the premises as shall agreeable to equity and good conscience.

EDWIN C. LITCHFIELD,
By EMMONS, VAN DYKE & HAMILTON, *Att'ys.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Personally appeared before me, on this 2d day of July, A. D. 1861, Russell Sage, who, being by me duly sworn, did depose and say that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein state to be on information and belief, and as to those matters he believes it to be true. This deponent further says that he is now the legal and equitable owner of the judgment set forth in said petition; that the same has been assigned to him by said petitioner, but that the instrument by which said judgment is assigned is not now in this State.

JOHN G. TOWNSEND,
*Commissioner District Court U. S., District of Wis.*

276 *Petition allowed.*

Whereupon, it is ordered by the court that the said Edwin C. Litchfield be, and hereby is, made a party defendant to this suit, and that the said bill may be amended accordingly, and that he have leave to file his answer thereto. And same day, (7th September, 1861,) petitioner filed his answer, as follows:

District court of the United States for the district of Wisconsin—In equity.

*Answer of E. C. Litchfield.*

JAMES T. SOUTTER & GREEN C. BRONSON, trustees,
*against*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

The separate answer of Edwin C. Litchfield to the complainants' bill of complaint in the above entitled cause respectfully shows to the court:

That on the 5th day of October, 1858, by the consideration and judgment of the district court of the United States for the district of Wisconsin, he, the said Edwin C. Litchfield, recovered a judgment in said court against the La Crosse and Milwaukee Railroad Company, for the sum of twenty-six thousand three hundred and thirty-two dollars and seventy-five cents, damages, and twenty dollars and seventy-six cents, costs; that said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated; that there is actually and equitably due upon said judgment the sum of $\$26{,}353\frac{51}{100}$, together with the interest thereon from the 5th day of October, A. D. 1858.

That the legal title to said judgment at the time of the filing of the complainants' bill of complaint was and still is of record, in the said Edwin C. Litchfield, as appears by the records of said district court.

The said Edwin C. Litchfield, further answering, shows to this

honorable court, that Russell Sage is now the equitable owner of the aforesaid judgment.

EDWIN C. LITCHFIELD,
By EMMONS, VANDYKE & HAMILTON, *Att'ys.*

EMMONS, VANDYKE & HAMILTON, *Sol'rs and of Counsel.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

Be it remembered, that on the 2nd day of July, A. D. 1861, personally appeared before me Russell Sage, who, being by me duly sworn, did depose and say that he had read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes the same to be true. Deponent further says that he is now the legal and equitable owner of the judgment set forth in said answer; that the same has been assigned to him by said Edwin C. Litchfield, but that the instrument by which said judgment is assigned is not now in this State.

JNO. G. TOWNSEND,
*Commissioner District Court U. S. for Dis. of Wis.*

277 October 7, 1861.—This day came Winfield Smith, Jerome R. Brigham, and I. A. Lapham, masters to whom reference was made, and filed their report, as follows:

*Masters' report.*

District court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON & JAMES T. SOUTTER, trustees,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY,
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY, SELAH CHAMBERLAIN, SEBRE HOWARD, *et als.*

To the Hon. A. G. Miller, judge.

In pursuance and by virtue of an order of reference made in this cause on the eleventh day of March, A. D. 1861, and of an order supplementary thereto, made on the twenty-first day of March, A. D. 1861, we, the undersigned, Winfield Smith, a master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, do respectfully report:

That we have been attended by the counsel for the parties, and have taken proofs in regard to the matters referred by the said order in addition to that on file, which proofs are herewith returned, consisting of depositions and exhibits, the latter numbered from one to thirty-nine inclusive. We further report that we have passed over the line of the railroad of the said La Crosse and Milwaukee Railroad Company, and we have examined those portions thereof, where any of the work done by the defendant Selah Chamberlain, as stated in the pleadings and testimony in this cause, was performed. Previous to which we gave notice of our intended examination to the counsel for the defendant Chamberlain, and to the counsel for the defendants Howard, Graham & Scott, and the Milwaukee and

Minnesota Railroad Company, informing them that they and engineers selected by them, respectively, were at liberty to accompany us and assist in making such examination. We also endeavored, but without success, to procure the attendance and aid of Ben-
278 jamin H. Edgerton, an engineer, whose testimony is among the depositions herewith returned.

We have ascertained and computed the amount of interest due and unpaid on the bonds and mortgage described in the bill of complaint in this cause, and the real amount of the said bonds.

The real amount of the principal sum payable upon the said bonds, being one thousand bonds of one thousand dollars each, allowed at fifty cents on a dollar, is five hundred thousand dollars, $500,000. And the interest due and unpaid thereon is twenty-five thousand five hundred and ninety-four dollars and sixteen cents, $25,594 16.

Which appears as follows:

The entire amount of such interest which has fallen due since the first day of March, A. D. 1859, when the last coupons were paid, is one hundred thousand dollars, being at the rate of eight per cent. per annum upon $500,000, the said principal sum from that date to the date of this report. ..... $100,000 00

From which sum we have deducted the amount received by the complainants through Prentis Dow, their agent, of net revenues of the road and property covered by the mortgage, (adding interest upon advances)..... $74,405 84

Leaving due, as stated, Sept. 1st, 1861..... 25,594 16

For that purpose we have stated an account of the receipts and disbursements of the said Dow, and have required him to produce his books and be examined under oath as to all things pertaining thereto; which examination, with the exhibits therein referred to, numbered from twelve to twenty-three, inclusive, and from twenty-five to twenty-seven, inclusive, are returned and filed herewith. The account of the complainants so stated, embracing the real amount of the instalments of interest falling due to the date hereof, and the receipts and disbursements through the said Dow, omitting the items of disbursements charged by the said Dow in his accounts presented to us and returned among the said last-named exhibits, but not allowed by us, and also exhibiting the balance of interest due over such payments, as aforesaid, and the mode in which the said balance is
279 obtained, is herewith returned and filed, marked Schedule first.

We have also ascertained the amount of the judgment of Newcomb Cleveland, mentioned in the said order, and now equitably owned by the defendant Selah Chamberlain. The same was rendered on the seventh day of October, 1 57, for—

Damages ..... $111,727 71
Costs ..... $544 15

And there was paid thereon, under the order of this court, April 22d, 1861, in full of interest and costs to that date, the sum of

| | |
|---|---|
| $28,801 92. The interest on the amount then due, at seven per cent., from that date to June 29, 1861, is | $1,455 56 |
| Adding principal | $111,727 71 |
| The total due was | $113,183 27 |
| At which date was paid | $10,000 00 |
| Leaving due, June 29th, 1861 | $103,183 27 |
| Upon which the interest to July 18th, 1861, at 7 per cent., is | $381 20 |
| Making the amount then due | $103,564 47 |
| There was paid at that date | $20,000 00 |
| Leaving then due | $83,564 47 |
| On which the interest to this date is | $698 68 |
| The amount due at the date hereof is | $84,263 15 |

Eighty-four thousand two hundred sixty-three dollars and fifteen cents.

We have also ascertained the amount of a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee county, on the twentieth day of April, A. D. 1859. There is due thereon at the date hereof—

| | |
|---|---|
| Damages and costs | $1,525 71 |
| Interest to 1 Sept., 1861 | $252 14 |
| The amount due at this date is | $1,777 85 |

We have also ascertained the amount of a certain other judgment rendered in favor of Newcomb Cleveland against the said railroad company, in the said circuit court, on the twentieth day of April, A. D. 1859. There is due thereon at the date hereof—

| | |
|---|---|
| Damages and costs | $3,718 60 |
| Interest to 1 Sept., 1861 | $614 60 |
| The amount due at this date is | $4,333 20 |

280 We have also ascertained the amount of the judgments of the defendant, Sebre Howard, mentioned in his answer filed in this cause. The amount of his judgment rendered in the said circuit court is embraced in the judgment rendered in his favor in this court on the twenty-eighth day of November, A. D. 1859; on which last-named judgment there is due at the date hereof—

| | |
|---|---|
| Damages and costs | $16,379 86 |
| Interest to 1 Sept., 1861 | $2,013 39 |
| The amount due at this date is | $18,393 25 |

We have ascertained the amounts of judgments of the defendants Graham & Scott, mentioned in their answer in this cause. The amounts of their judgments rendered in the said circuit court are embraced in the judgment rendered in their favor in this court, on the law side thereof, on the eleventh day of January, A. D. 1860, on which last-named judgment there is due at the date hereof—

| | |
|---|---|
| Damages and costs | $44,413 18 |
| Interest to 1 Sept., 1861 | $5,092 78 |
| The amount due at this date is | $49,505 96 |

We have ascertained and determined that the lots sold under the execution issued on the said judgment of Sebre Howard, rendered in the said circuit court, are covered by the mortgage of the complainants described in the bill of complaint in this cause. The papers herewith filed, marked Schedule second, being certified copies of the sheriff's certificate of sale under the said execution, contain a list and description of the lots so sold.

We have enquired into and ascertained the amount of the several specific claims of the defendant, Selah Chamberlain, and have taken and stated an account of his receipts and set-offs and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages. And we have examined the said Chamberlain under oath, and have required him to produce his books, which he has accordingly done, and we have taken additional testimony to that on file. The account of the said Chamberlain, comprising the said claims,
281 (exclusive of the judgment rendered in favor of Newcomb Cleveland, first above mentioned,) presented to us, is herewith returned, marked Schedule third. The papers marked Schedule fourth, herewith returned, contain his account with the said railroad company, as allowed and stated by us, showing the amount of his several specific claims against the said company, as allowed by us, omitting the last-mentioned judgment, and also the items disallowed by us, and showing, also, the amount of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, and showing the balance due to him, including interest, at the date of this report; which balance we have ascertained to be four hundred eighteen thousand six hundred sixteen dollars and seventy cents.

And we have made a separate statement, as part of said Schedule fourth, of the real and just amounts due on the second day of October, A. D. 1857, on account of the items of indebtedness included in the judgment of Selah Chamberlain rendered at that date, and mentioned in the pleadings in this cause, showing that the true amount of such items of indebtedness was, at that date, $568,975 77.

Of the several specific claims so allowed, and stated in the said account, is one, under date of October 1st, 1858, for monies paid by the

said Chamberlain, on and before that date, in the construction of the depot building of the said company at La Crosse, to the amount of..... $12,190 95
On which interest to the date hereof from that, at 7 per cent., is..... 2,489 00

The amount due at this date is..... $14,679 95

Which sum is secured to the said Chamberlain, who holds the title to the said building and the ground on which it stands.

And another of the said claims so allowed, under date of March 1st, 1859, is for monies paid by the said Chamberlain to Jacob A. Hoover for a lot of land in the city of Milwaukee, crossed by the said railroad, and used for its purposes, to the amount of..... $3,236 52
On which interest to the date hereof, at 7 per cent., is... 566 38

The amount due at this date is..... $3,802 90

282 Which sum is likewise secured to the said Chamberlain, who holds the title to the said lot.

We have also ascertained the whole amount of rolling stock on the whole road. The amount thereof, at the cost price, was, at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents. And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road six hundred twenty-three thousand two hundred thirty-five dollars and seventy-eight cents, ($623,235 78.)

And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting at the cost price thereof to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, ($31,979 64,) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and no other. And all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the complainants' mortgage specified in the bill of complaint.

In ascertaining the facts and amounts, and in making the computations herein above contained and referred to, we have been guided by the opinions and instructions of the court, communicated to us in connection with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1 September, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

*La Crosse and Milwaukee Railroad Company in account with Greene C. Bronson and James T. Soutter, trustees in receipt of the revenues.*

| DR. | | | | CR. | | | |
|---|---|---|---|---|---|---|---|
| 1859. | | | | 1859. | | | |
| Dec. 1 | To balance due from the road, payable by the trustees out of earnings | | $68,789 73 | Dec. 1 | By sundry items of operating expenses previously paid | | $515 63 |
| | | | | | Previous earnings collected by trustees | | 21,085 49 |
| 1860. | | | | 1860. | | | |
| Jan. 1 | Operating expenses for December, '59 | | 28,669 82 | Jan. 1 | Earnings for December, '59 | | 44,697 50 |
| Feb. 1 | Do ....do.... January, '60 | | 26,251 23 | Feb. 1 | Do ....January, '60 | | 32,883 56 |
| | Cash for rolling stock | | 14,195 71 | | Cash from S. Chamberlain | | 11,460 00 |
| | Do ...State tax | | 4,924 54 | Mar. 1 | Earnings for February, '60 | | 36,669 76 |
| | Do ...incumbrances on real estate | | 16,823 73 | April 1 | Do ....March, '60 | | 44,269 15 |
| | Do ...right of way | | 3,184 57 | May 1 | Do ....April, '60 | | 50,532 26 |
| | Do ...depot buildings at Junction | | 2,059 14 | | Cash from S. Chamberlain, to pay for rolling stock | | 14,195 71 |
| Mar. 1 | Operating expenses for February, '60 | | 22,192 06 | | Sundry amounts paid by S Chamberlain | | 1,383 20 |
| April 1 | Do ....do.... March, '60 | | 29,833 50 | | Sundry items of operating expenses paid by S. Chamberlain | | 157 90 |
| May 1 | Do ....do.... April, '60 | | 30,755 29 | June 1 | Earnings for May, 1860 | | 69,623 47 |
| June 1 | Do ....do.... May, '60 | | 44,354 83 | 9 | Do ....June, 1860, to date | | 10,284 69 |
| 9 | Do ....do.... June, to date | | 15,528 93 | | Previous operating expenses unpaid and payable by the receiver | | 44,503 56 |
| | Previous earnings payable to the receiver | | 1,172 79 | | | | |
| | Cash for recording deeds in exhibit 22 | | 2 80 | | | | |
| | Do ..exchange on New York ..do. | | 270 00 | | | | |
| | Interest on real amount of principal of mortgage of September 1, 1857, from March 1, 1859, to March 1, 1860, at 8 per cent | | 40,000 00 | | | | |
| | Balance in hands of trustees, June 9 | | 33,253 21 | | | | |
| | | | 382,261 88 | | | | 382,261 88 |
| 1860. | | | | | | | |
| Sept. 1 | To interest on real amount of principal of mortgage to date | | 20,000 00 | June 9 | By balance in hands of trustees June 9 | | 33,253 21 |
| | Balance in hands of trustees, September 1 | | 13,851 77 | Sept. 1 | Interest on same to date, at 8 per cent | | 598 56 |
| | | | 33,851 77 | | | | 33,851 77 |

| | | | | | |
|---|---|---|---|---|---|
| 1861. Mar. 1 | To interest as above, to date | 20,000 00 | Sept. 1 1861. Mar. 1 | By balance in hands of trustees | 13,851 77 |
| | | | | Interest on same to date, at 8 per cent | 554 07 |
| | | | | Balance of interest not paid | 5,594 16 |
| | | 20,000 00 | | | 20,000 00 |
| 1861. Mar. 1 | To balance of interest unpaid | 5,594 16 | | | |
| Sept. 1 | Interest, at 8 per cent., to date | 20,000 00 | | | |
| | Total interest due September 1, 1861 | 25,594 16 | | | |

284 SCHEDULE 2ND.—1731.

Printed notice.—[News.]

*Sheriff's sale.*

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

SEBRE HOWARD
*against*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY. } Execution.

By virtue of an execution issued from said court in the above entitled action, to me directed and delivered, against the personal and real property of above-named "The La Crosse and Milwaukee Railroad Company," I have seized and taken all the right, title, and interest of said defendant in and to all the line and tract of land of the defendants' railroad, being about eighty (80) feet in width, beginning at the south end of block forty-one (41) in the second ward of the city of Milwaukee, and extending thence northwesterly to where the same crosses the west line of the town of Granville, in the county of Milwaukee; also all the right, title, and interest of said defendant in and to the following described lots and parcels of land, used as depot grounds by the defendant, including all the buildings thereon: Lots one, three and four, in block one; lots one, four, seven, and eight, in block thirteen; lots nine, eleven, and twelve, in block fifteen; lots four, eleven, and twelve, in block sixteen; lot six, in block nineteen; lots five and thirteen, in block twenty; lot seven, in block twenty-one; lots eight and sixteen, in block twenty-two; lots one, three, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen, in block thirty, all in the sixth ward of the city of Milwaukee; also lots one and two, and all of lot three, except the south sixty-feet, in block thirty-three; lots two, three, four, seven, eight, nine, and the south half of lot six; all that part of north half of lot five which lies east of a line beginning at a point on the north line of said lot, twenty-six feet and six inches east of the east line of Third street, or west line of said lot, running thence somewhat east of the south to a point distant thirty-four feet six inches from said street, in block forty; also all that part of lot one which lies west of a straight line drawn from a point in the south line of said lot, sixteen feet east from the west side of said lot, to a point in the north line of
285 said lot, eight and one-half feet from the west line of said lot, in block forty; also lot ten, excepting and reserving from this grant that part which Jabez K. Botsford once conveyed to F. C. Lackner, being a strip from off the north side of said lot, twenty feet wide and running east seventy-five feet, in block forty; lots one, two, three, four, five, six, seven, eight, nine, and ten, in block forty-one, all in the second ward of the city of Milwaukee; also lots seven and eight, and part of lots five and six, in block thirty-three, in Sherman's addition; that part of lot four which lies east of the La Crosse and Milwaukee railroad, in block forty-seven; lot one, block forty-eight;

that part of the reserved acre in Sherman's addition which lies east of the right of way of said La Crosse and Milwaukee railroad, all in Sherman's addition, in the sixth ward of the city of Milwaukee; lots five, six, seven, eighteen, nineteen, forty, forty-one, forty-two, forty-three, forty-eight, fifty, fifty-one, fifty-nine, sixty, sixty-nine, seventy-one, seventy-two, seventy-three, seventy-four, eighty-four, eighty-eight, being canal lots, (so called;) also Byron Kilbourn's interest in a part of the island, extending below Point street, in lot one, section twenty, township seven, range twenty-two; also five and forty-three one-thousandths of an acre in lot eighty-three of the subdivision of lots two and three, section twenty-first, township seven, range twenty-two, all in the sixth ward of the city of Milwaukee; also lots four and five, in block fifty, in the seventh ward; all situate, lying, and being in the city of Milwaukee, in the county of Milwaukee, and State of Wisconsin.

Which said described property, as aforesaid, I shall expose for sale, and sell at public auction, at the court-house in the city of Milwaukee, in said county, on Saturday, the 15th day of January, 1859, at the hour of 2 p. m. of that day, to satisfy the amount of said execution, together with costs and expenses of sale.

Dated Sheriff's Office, Milwaukee, Nov. 29, 1858.

HERMAN L. PAGE, *Sh'ff Mil. Co., Wis.*
LEVI HUBBELL, *Pl'ffs' Att'y.*

STATE OF WISCONSIN, *Milwaukee County, ss:*

C. F. Huntsman, being duly affirmed, says that he is the foreman of the "Milwaukee Daily News," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one 286 annexed is a true copy, was duly published in such newspaper, once in each week, for six successive weeks, commencing on the 30th day of November, A. D. 1858, and ending on the 15th day of January, A. D. 1859.

C. F. HUNTSMAN.

Subscribed and affirmed to this 17th day of January, A. D. 1859, before me.

G. W. CLASON, *Notary Public, Mil. Co., Wis.*

Circuit court for the county of Milwaukee.

STATE OF WISCONSIN, *Milwaukee county:*

SEBRE HOWARD *against* THE LA CROSSE and MILWAUKE RAILROAD COMPANY.

| | |
|---|---|
| Execution tested October 29th, 1858: | |
| Damages..... | $25,586 78 |
| Interest from May 1, 1858, to January 15, 1859..... | 1,268 71 |
| Costs taxed at..... | ..... |
| Execution, &c..... | ..... |
| Sheriff's fees, &c., on execution. | 48 75 |
| Printers for advertising sale.... | 12 85 |
| | $26,917 09 |

I, Herman L. Page, late sheriff of the county of Milwaukee, do certify that by virtue of an execution issued in the above entitled action, to me directed and delivered, I have this day sold all the right, title, and interest which the said defendant had on the first day of May, A. D. 1858, or has since acquired in and to the following described property, to wit: all the right, title, and interest of said defendant in and to all the line and tract of land of the defendant's railroad, being about eighty (80) feet in width, beginning at the south end of block forty-one, (41,) in the second ward of the city of Milwaukee, and extending thence northwesterly to where the same crosses the west line of the town of Granville, in the county of Milwaukee, situate, lying, and being in the city and county of Milwaukee and State of Wisconsin, together with all the appurtenances thereunto belonging, being the same property as described in the annexed printed notice, unto Charles Howard for the sum of four thousand dollars, that being the highest sum bid, and he being the highest bidder therefor. And I further certify that the said Charles Howard will be entitled to a conveyance by deed, in pursuance of law, for the said premises at the expiration of twenty-seven months from the date hereof, to wit, on the 16th day of April in the year of our Lord one thousand eight hundred and sixty-one, unless the same shall be redeemed before
287 that time, in pursuance of the statute in such case made and provided, by some person authorized to redeem the same.

Given under my hand, at the sheriff's office, in the city of Milwaukee, on this fifteenth day of January, A. D. 1859.

HERMAN L. PAGE,
*State Sheriff of Milwaukee County.*

Filed January 19th, 1859, at 3 o'clock p. m.

STATE OF WISCONSIN,
*Milwaukee County, Register's Office:*

I certify that the foregoing is a true and correct transcript from a certain sheriff's certificate of sale on file in my office, and has been by me carefully compared with said document, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand *hand* this 24th of May, 1861. CHRISTIAN FESSEL,
*Register.*

1731.—Printed notice.—[News.]

*Sheriff's sale.*

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

SEBRE HOWARD
*against*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY. } Execution.

By virtue of an execution issued from said court in the above entitled action, to me directed and delivered, against the personal and real

property of above named "The La Crosse and Milwaukee Railroad Company," I have seized and taken all the right, title, and interest of said defendant in and to all the line and tract of land of the defendant's railroad, being about eighty (80) feet in width, beginning at the south end of block forty-one, (41,) in the second ward of the city of Milwaukee, and extending thence northwesterly to where the same crosses the west line of the town of Granville, in the county of Milwaukee; also all the right, title, and interest of said defendant in and to the following described lots and parcels of land used as
288 depot grounds by the defendant, including all the buildings thereon: Lots one, three, and four, in block one; lots one, four, seven, and eight, in block thirteen; lots nine, eleven, and twelve, in block fifteen; lots four, eleven, and twelve, in block sixteen; lot six, in block nineteen; lots five and thirteen, in block twenty; lot seven, in block twenty-one; lots eight and sixteen, in block twenty-two; lots one, three, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen, in block thirty; all in the sixth ward of the city of Milwaukee; also lots one and two, and all of lot three, except the south sixty feet, in block thirty-three; lots two, three, four, seven, eight, nine, and the south half of lot six; all that part of the north half of lot five which lies east of a line beginning at a point in the north line of said lot, twenty-six feet and six inches east of the east line of Third street, or west line of said lot, running thence somewhat east of the south to a point distant thirty-four feet six inches from said street, in block forty; also all that part of lot one which lies west of a straight line drawn from a point in the south line of the said lot, sixteen feet east from the west side of said lot to a point in the north line of said lot, eight and one-half from the west line of said lot, in block forty; also lot ten, excepting and reserving from this grant that part which Jabez K. Botsford once conveyed to F. C. Lackner, being a strip from off the north side of said lot twenty feet wide, and running east seventy-five feet, in block forty; lots one, two, three, four, five, six, seven, eight, nine, and ten, in block forty-one; all in the second ward of the city of Milwaukee; also lots seven and eight, and part of lots five and six, in block thirty-three, in Sherman's addition; that part of lot four which lies east of the La Crosse and Milwaukee railroad, in block forty-seven; lot one, block forty-eight; that part of the reserved acre in Sherman's addition which lies east of the right of way of said La Crosse and Milwaukee railroad, all in Sherman's addition, in the sixth ward of the city of Milwaukee; lots five, six, seven, eighteen, nineteen, forty, forty-one, forty-two, forty-three, forty-eight, fifty, fifty-one, fifty-nine, sixty, sixty-nine, seventy-one, seventy-two, seventy-three, seventy-four, eighty-four, eighty-eight, being canal lots, (so called;) also Byron Kilbourn's interest in a part of the island extending below Point street, in lot one, section twenty, township seven, range twenty-two; also five and forty-three one-thousandths of an acre in lot eighty-three, of the subdivision of lots two and three,
289 section twenty-first, township seven, range twenty-two; all in the sixth ward of the city of Milwaukee; also lots four and five, in block fifty, in seventh ward; all situate, lying, and being in the city of Milwaukee, in the county of Milwaukee and State of Wiscon-

sin. Which said described property, as aforesaid, I shall expose for sale and sell at public auction, at the court-house in the city of Milwaukee, in said county, on Saturday, the 15th day of January, 1859, at the hour of 2 p. m. of that day, to satisfy the amount of said execution, together with costs and expenses of sale. Dated Sheriff's Office, Milwaukee, Nov. 29, 1858.

HERMAN L. PAGE,
*Sheriff Mil. Co., Wis.*
LEVI HUBBELL,
*Plff's Att'y.*

STATE OF WISCONSIN,
*Milwaukee County, ss:*

C. F. Huntsman, being duly affirmed, says that he is the foreman of the "Milwaukee Daily News," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week, for six successive weeks, commencing on the 30th day of November, A. D. 1858, and ending on the 15th day of January, A. D. 1859.

C. F. HUNTSMAN.

Subscribed and affirmed to this 17th day of January, A. D. 1859, before me.

G. W. CLASON,
*Notary Public Mil. Co., Wis.*

Circuit court for the county of Milwaukee.

STATE OF WISCONSIN,
*Milwaukee County:*

SEBRE HOWARD
*against*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

| | |
|---|---|
| Execution tested October 29th, 1858. Damages..... | $25,586 78 |
| Interest, from May 1, 1858, to Jan'y 15, 1859..... | 1,268 71 |
| Sheriff's fees on execution..... | 48 75 |
| Printer for advertising sale..... | 12 85 |
| | $26,917 09 |

I, Herman L. Page, late sheriff of the county of Milwaukee, do certify, that by virtue of an execution issued in the above entitled action, to me directed and delivered, I have this day sold all the
290 right, title, and interest which the said defendant had on the first day of May, A. D. 1858, or has since acquired, in and to the following described property, to wit: Lots one, three, and four, in block one; lots one, four, seven, and eight, in block thirteen; lots nine, eleven and twelve, in block fifteen; lots four, eleven, and twelve, in block sixteen; lot six, in block nineteen; lots five and thirteen, in block

twenty; lot seven, in block twenty-one; lots eight and sixteen, in block twenty-two; lots one, three, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen, in block thirty; all in the sixth ward of the city of Milwaukee; also lots one and two, and all of lot three, except the south sixty feet, in block thirty-three; lots two, three, four, seven, eight, nine, and the south half of lot six; all that part of north half of lot five which lies east of a line beginning at a point on the north line of said lot, twenty-six feet and six inches east of the east line of Third street or west line of said lot, running thence somewhat east of the south to a point distant thirty-four feet six inches from said street, in block forty; also all that part of lot one which lies west of a straight line drawn from a point in the south line of said lot sixteen feet east from the west side of said lot to a point in the north line of said lot, eight and one-half feet from the west line of said lot, in block forty; also lot ten, excepting and reserving from this grant that part which Jabez K. Batsford once conveyed to C. F. Lackner, being a strip from off the north side of said lot twenty feet wide and running east seventy-five feet, in block forty; lots one, two, three, four, five, six, seven, eight, nine, and ten, in block forty-one; all in the second ward of the city of Milwaukee; also lots seven, eight, and part of lots five and six, in block thirty-three, in Sherman's addition; that part of lot four which lies east of the La Crosse and Milwaukee railroad, in block forty-seven; lot one, in block forty-eight; that part of the reserved acre in Sherman's addition which lies east of the right of way of said La Crosse and Milwaukee railroad, all in Sherman's addition in the sixth ward of the city of Milwaukee; lots five, six, seven, eighteen, nineteen, forty, forty-one, forty-two, forty-three, forty-eight, fifty, fifty-one, fifty-nine, sixty, sixty-nine, seventy-one, seventy-two, seventy-three, seventy-four, eighty-four, eighty-eight, being canal lots, (so called;) also Byron Kilbourn's interest in a part of the island extending below Point street, in lot one, section twenty, township seven, range twenty-two; also five and forty-three one-thousandths of
291 an acre in lot eighty-three of the subdivision of lots two and three, section twenty-first, township seven, range twenty-two; all in the sixth ward of the city of Milwaukee; also lots four and five, in block fifty, in the seventh ward; all situate, lying, and being in the city of Milwaukee, in the county of Milwaukee and State of Wisconsin, together with all the appurtenances thereunto belonging, being the same property as described in the annexed printed notice, unto Sebre Howard, for the sum of seven thousand five hundred dollars, that being the highest sum bid, and he being the highest bidder therefor; and I further certify that the said Sebre Howard will be entitled to a conveyance by deed, in pursuance of law, for the said premises, at the expiration of twenty-seven months from the date hereof, to wit, on the 16th day of April, in the year of our Lord one thousand eight hundred and sixty-one, unless the same shall be redeemed before that time, in pursuance of the statute in such case made and provided, by some person authorized to redeem the same.

Given under my hand, at the sheriff's office in the city of Milwaukee, on this 15th day of January, A. D. 1859.

HERMAN L. PAGE,
*Late Sheriff of Milwaukee County.*

Filed January 19th, 1859, at 3 o'clock p. m.

STATE OF WISCONSIN, *Milwaukee County, Register's Office:*

I hereby certify that the foregoing is a true and correct transcript from a certain sheriff's certificate of sale on file in my office, and has been by me carefully compared with said document, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this 24th day of May, 1861.

CHRISTIAN FESSEL, *Register.*

292 SCHEDULE THIRD.

*The La Crosse and Milwaukie Railroad Company in account with S. Chamberlain,* DR.

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | | | |
| Oct. 1. | For amount of judgment..... | | 629, 089 72 | | |
| | " liquidated damages..... | 200, 000 | | | |
| | " less rec'd 200 2d mtg. bonds..... | 100, 000 | | | |
| | | | 100, 000 00 | | |
| | " amount increased by re-estimate of E. W. Woodward and W. R. Sill | | 24, 213 05 | | |
| | " draft on Bank of Republic, included in settlement but not paid..... | | 5, 000 00 | | |
| | " getting engines, cars, and iron over Wisconsin river..... | | 3, 119 43 | | |
| Dec. 1. | " completing road to New Lisbon.. | | 56, 500 00 | | |
| | " bill for repairing gravel cars .... | | 318 77 | | |
| 1858. | | | | 818, 240 97 | |
| July 1. | " int. on 5 first items, 671,422 20, *a* 12 per cent.. | | | 69, 527 99 | |
| | " ditto on 2 last items, 56,818 77, *a* 12 per cent.. | | | 3, 977 31 | |
| | | | | | 891, 746 27 |
| Mar. 1. | " this am't paid interest on $1,000,000 2d mortgage bonds..... | | 40, 000 00 | | |
| | " ditto on 314,000 Mil. city do..... | | 10, 990 00 | | |
| | " exchange on above..... | | 1, 529 70 | | |
| May 1. | " this am't paid interest on $950,000 1st mortgage bonds ..... | | 38, 000 00 | | |
| | " exchange on same..... | | 475 00 | | |
| July 1. | " interest on above to date, 12 pr. ct. | | 2, 874 54 | | |
| | | | | 93, 869 24 | |
| | | | | | 985, 615 51 |

*The La Crosse and Milwaukie Railroad Company in account with S. Chamberlain,* Dr.—Continued.

Credit.

| | | | | |
|---|---|---|---|---|
| 1857. | | | | |
| Nov. 1. | By nett earnings in Oct..... | 30,570 29 | | |
| Dec. 1. | " " " Nov..... | 24,698 25 | | |
| 1858. | | | | |
| Jan'y 1. | " " " Dec ..... | 15,153 31 | | |
| Feb'y 1. | " " " Jan'y ..... | 12,505 92 | | |
| Mar. 1. | " " " Feb'y ..... | 10,171 18 | | |
| Ap'l 1. | " " " Mar ..... | 12,922 88 | | |
| May 1. | " " " Ap'l ..... | 19,152 02 | | |
| June 1. | " " " May ..... | 25,867 99 | | |
| July 1. | " " " June..... | 23,389 73 | | |
| July 1. | Interest on above to date, *a* 12 pr. ct.. | 7,145 20 | | |
| | | | | 181,576 77 |
| | Due Ja'y 1, 1859..... | | | 804,038 70 |

Debit.

| | | | |
|---|---|---|---|
| July. | For gravelling between Milwaukee and Beaver Dam, as per estimate... | 9,806 50 | |
| | " stone and cement for drawbridge at Portage ..... | 1,089 81 | |
| 293 | | 10,896 31 | $804,038 74 |
| 1858. | | | |
| July. | For amount bro't forward..... | 10,896 31 | 804,038 74 |
| | " hauling pas'r engine and cars over dividing ridge ..... | 53 00 | |
| | " bill of lumber for water-tank..... | 76 58 | |
| | " bill of chain and spikes..... | 1,116 30 | |
| Aug't. | " " of labor for building road beyond La Crosse depot..... | 2,556 75 | |
| | " cost of La Crosse station buildings | 12,190 00 | |
| | " advance for right of way, &c .... | 10,190 19 | |
| | " paid J. A. Hoover, mortgage..... | 3,236 52 | |
| 1860. | | | |
| Jan'y 1. | " interest on 12,142 19 to date, *a* 12 per cent..... ..... | 728 53 | |
| " 1. | " ditto on 28,173 46 to date, *a* 12 per cent..... | 1,408 67 | |
| " 1. | " ditto on 804,038 74 to date, *a* 12 per cent..... | 48,242 32 | |
| | | | 90,695 17 |
| 1858. | | | 894,733 91 |
| Sept. 1. | " this amount paid, interest on $1,000,000 2d mortgage bonds.. | 40,000 00 | |
| | " ditto on $314,000 Mil. city do .... | 10,990 00 | |
| | " advertising same..... | 54 48 | |
| | " exchange on " ..... | 510 44 | |
| Nov. 1. | " this am't paid, int. on $950,000 1st mortgage bonds..... | 38,000 00 | |

*The La Crosse and Milwaukie Railroad Company in account with S. Chamberlain,* DR.—Continued.

| | | | |
|---|---|---|---|
| | For this amount dep'd at U. S. Trust Co. for sinking fund on same... | 12,000 00 | |
| | " exchange and advertising ..... | 522 06 | |
| 1859. | | | |
| Jan'y 1. | " interest on above, *a* 12 per cent.. | 3,072 60 | |
| | | | 105,149 58 |
| | CREDIT. | | |
| 1859. | | | 999,883 49 |
| Aug't 1. | By nett earnings in July..... | 25,171 43 | |
| Sept. 1. | " " " Aug ..... | 13,630 41 | |
| Oct. 1. | " " " Sept ..... | 37,120 31 | |
| Nov. 1. | " " " Oct..... | 28,931 16 | |
| Dec. 1. | " " " Nov ..... | 22,744 43 | |
| 1860. | | | |
| Jan'y 1. | " " " Dec..... | 12,517 22 | |
| | Interest on above to Jan'y 1, 1859, *a* 12 per cent..... | 3,723 44 | |
| | | | 143,838 40 |
| | Amount due January 1, 1859 ..... | | 856,045 09 |
| 1859. | | | |
| Sep. 1. | For this am't paid, interest on $1,000,000 2d mortgage bonds..... | 40,000 00 | |
| | " ditto on 314,000 Mil. city do..... | 10,990 00 | |
| 294 | | 50,990 00 | |
| 1858. | | | |
| March | For amount bro't forward..... | 50,990 00 | 856,045 09 |
| | " advertising interest ..... | 20 40 | |
| | " exchange on same..... | 765 12 | |
| May 1. | " this amount paid, int. on $950,000 1st mortgage bonds ..... | 38,000 00 | |
| | " advertising same..... | 17 60 | |
| | " exchange on " ..... | 570 25 | |
| | " interest on above to July 1, 1859, *a* 12 per cent ..... | 2,848 54 | |
| | " interest on 856,045 09, July 1, *a* 12 per cent..... | 51,362 70 | |
| | | | 144,576 61 |
| | CREDIT. | | |
| 1859. | | | 1,000,621 70 |
| Feb'y 1. | By earnings in Jan'y, nett..... | 6,415 71 | |
| Mar. 1. | " " " Feb'y, " ..... | 2,450 62 | |
| April 1. | " " " Mar., " ..... | 1,561 88 | |
| May 1. | " " " Ap'l " ..... | 575 21 | |
| June 1. | " " " May, " ..... | 14,025 53 | |
| July 1. | " " " June, " ..... | 18,175 59 | |
| | " interest on above to July 1, '59, *a* 12 per cent..... | 617 40 | |
| | | | 43,821 94 |
| | Amount due S. C. July 1, 1859..... | | 956,799 76 |

*The La Crosse and Milwaukie Railroad Company in account with S. Chamberlain,* DR.—Continued.

| | | | | |
|---|---|---|---|---|
| Aug't 1. | By earnings in July, nett..... | | 662 10 | |
| Sept. 1. | " " " Aug't, " ..... | | 19,308 98 | |
| Oct. 1. | " " " Sept., " ..... | | 66,260 48 | |
| Nov. 1. | " " " Oct., " ..... | | 71,980 37 | |
| Dec. 1. | " " " Nov., " ..... | | 40,047 85 | |
| | " interest on above to Jan'y 1, 1860, *a* 12 per cent ..... | | 4,633 45 | |
| | DEBIT. | | | |
| | For interest on 956,799 76 to Jan'y 1, 1860, *a* 12 per cent ..... | | | 57,407 98 |
| | | | | 1,014,207 74 |
| | | | | 202,897 23 |
| 1860. | | | | 811,310 51 |
| July 1. | " interest from Jan'y 1, '60, to July 1, '60, *a* 12 per cent ..... ..... | | | 48,678 63 |
| 1861. | | | | 859,989 14 |
| Jan'y 1. | " interest from July 1, '60, to Jan'y 1, '61, *a* 12 per cent ..... | | | 51,599 34 |
| 1861. | | | | 911,588 48 |
| July 1. | " interest from Jan'y 1, '60, to July 1, '61 ..... | | | 54,695 30 |
| | | | | 966,283 78 |
| | " loss on steamer Keokuk..... | | 11,000 00 | |
| | " interest to July 1, '61, as p. statement an'ex'd..... | | 7,238 88 | |
| 295 | | | 18,238 88 | |
| 1861. | | | | |
| July 1. | For amount bro't forward..... | | 18,238 88 | 966,283 78 |
| | " additional loss on Keokuk..... | | 2,104 00 | |
| | " interest on last item, say 1 year.. | | 252 48 | |
| | | | | 20,595 36 |
| | CREDIT. | | | 986,879 14 |
| | Deduct outstanding balances Dec. 1, 1859, due from the road..... | | 78,450 36 | |
| | Add for error in car spring ac ..... | | 308 01 | |
| | | | 78,758 37 | |
| | Less amounts of these balances paid and assumed by S. Chamberlain, viz: | | | |
| | S. Chamberlain & Co.'s ac.... | 4,185 07 | | |
| | S. Chamberlain coal ac ..... | 2,247 62 | | |
| | D. L. Wells's ac..... | 1,965 56 | | |
| | Pay-roll ac..... | 1,570 39 | | |
| | | | 9,968 64 | |
| | | | 68,789 73 | |

*The La Crosse and Milwaukee Railroad Company in account with S. Chamberlain,* Dr.—Continued.

| | | | | |
|---|---|---|---|---|
| | Less payment made by S. Chamberlain on ac. of these balances, viz: | | | |
| | Earnings prior to Dec. p'd trustees | 21,085 49 | | |
| | Cash paid car notes | 11,115 45 | | |
| | Ditto do. | 3,080 26 | | |
| | Balance due the road Dec. 1, collected by the trustees. | 515 63 | | |
| | Cash at sundry times | 11,460 00 | | |
| | | | 47, 256 83 | |
| | | | 21, 532 90 | |
| | Subject also to deductions, as follows: Operating expenses of trustees, viz: | | | |
| | S. Chamberlain & Co.'s bills. | 715 30 | | |
| | Loyd & Supplee.... 57 00 / Mill. Gas Company. 44 10 | 101 10 | | |
| | D. W. Keyes | 230 23 | | |
| | Beck & Gardner | 110 00 | | |
| | | $1,156 63 | | |
| | Less Keokuk bill p'd by trustees for S. C. | 573 74 | | |
| | | | 582 89 | |
| | | | 20, 950 01 | |
| | Interest on above from Jan'y 1, '59, to July 1, '61 | | 6, 232 31 | |
| | | | | 27, 182 32 |
| | | | | $959, 696 82 |
| Dec. | Add loss on Keokuk paid by trustees and not before charged | | | 573 74 |
| | Int. 2 years and 7 mo | | | 177 85 |
| | Real estate coupons paid Julusch Dec'r 18th, 1858 | | 254 74 | |
| | Int. from Dec'r 18, '58, to July 1, '61 | | 77 52 | |
| | | | | 332 26 |
| | | | | 960, 780 67 |

Page 1. DR. *The La Crosse & Milwaukee R. R. Co. in account with Selah Chamberlain.* CR. Page 1.

| 1857. | | | | 1857. | | |
|---|---|---|---|---|---|---|
| Oct. 2 | To real amount due on items included in judgment | $568,975 77 | | Oct. 31 | By net earnings for October | $30,570 29 |
| | Grading depot grounds at Kilbourn City | 973 20 | | | Balance | 551,885 09 |
| | Damages for detention and change of line at New Lisbon | 1,121 | | | | |
| | Draft on Bank of Republic, Sept. 4, '57, included in settlement but not paid | 5,000 | | | | |
| | Getting engine, cars, and iron over the Wisconsin river | 3,119 43 | | | | |
| 31 | Interest on above sums, at 7 pr. ct., from Oct. 2d to date | 3,265 98 | | | | |
| | | $582,455 38 | | | | $582,455 38 |
| Nov. 1 | To balance brought forward | 551,885 09 | | Nov. 30 | By net earnings for November | 24,698 25 |
| 30 | Interest to date | 3,219 32 | | | Balance | 530,406 16 |
| | | 555,104 40 | | | | 555,104 41 |
| Decem. 1 | To balance bro't forward | 530,406 16 | | Dec. 31 | By net earnings for December | 15,153 31 |
| | Completing track-laying, ballasting, and grading on line from Portage City to New Lisbon | 62,000 | | | | 581,029 18 |
| | Repairing gravel cars | 318 77 | | | | |
| 31 | Interest to date | 3,457 56 | | | | |
| | | 596,182 49 | | | | 596,182 49 |

*Schedule fourth*—Continued.

| Dr. | | | Cr. | | |
|---|---|---|---|---|---|
| 1858. | | | 1858. | | |
| Jan'y 1 | To balance bro't forward | 581,029 18 | Jan. 31 | By net earnings for January | 12,505 92 |
| 31 | Interest to date | 3,389 33 | | Balance | 571,912 59 |
| | | 584,418 51 | | | 584,418 51 |
| Feb. 1 | To balance bro't forward | 571,912 59 | Feb. 28 | By net earnings for February | 10,171 18 |
| 28 | Interest to date | 3,336 15 | | Balance carried over | 565,077 56 |
| | | 575,248 74 | | | 575,248 74 |
| 298 Page 2. | | | | | 299 Page 2. |
| 1858. | | | 1858. | | |
| March 1 | To balance bro't over | $565,077 56 | March 31 | By net earnings for March | $12,922 88 |
| | Interest on 2d mort. bonds paid | 39,840 | | Balance | 607,839 31 |
| | Do ..... city bonds ($114,000) paid | 3,937 50 | | | |
| | Do ..... city bonds ($200,000) paid | 6,790 | | | |
| | Exchange on same, 3 per ct., paid | 1,517 02 | | | |
| 31 | Interest to date | 3,600 11 | | | |
| | | 620,762 19 | | | $620,762 19 |
| April 1 | To balance bro't forward | 607,839 31 | April 30 | By net earnings for April | 19,152 02 |
| 30 | Interest to date | 3,545 71 | | Balance | 592,233 |
| | | 611,385 02 | | | 611,385 02 |
| May 1 | To balance bro't forward | 592,233 | May 31 | By net earnings for May | 25,867 99 |
| | Interest paid on 1st mort. bonds | 37,840 | | Balance | 608,356 19 |
| | Exchange on same | 473 | | | |
| 31 | Interest to date | 3,678 18 | | | |
| | | 634,224 18 | | | 634,224 18 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| June | 1 | To balance bro't forward | 608,356 19 | June | 30 | By net earnings for June | 23,389 73 |
| | 30 | Interest to date | 3,548 74 | | | Balance | 588,515 20 |
| | | | 611,904 93 | | | | 611,904 93 |
| July | 1 | To balance bro't forward | 588,515 20 | July | 31 | By net earnings for July | 25,171 43 |
| | | Stone and cement for drawbridge at Portage | 1,089 81 | | | Balance | 569,126 08 |
| | | Hauling engine and cars over dividing ridge | 53 | | | | |
| | | Lumber for water tanks | 76 58 | | | | |
| | | Chairs and spike | 1,116 30 | | | | |
| | 31 | Interest to date | 3,446 62 | | | | |
| | | | 594,297 51 | | | | 594,297 51 |
| Aug. | 1 | To balance bro't forward | 569,126 08 | Aug. | 31 | By net earnings for August | 13,630 41 |
| | 31 | Interest to date | 3,319 90 | | | | 558,815 57 |
| | | | 572,445 98 | | | | 572,445 98 |
| | | 300 Page 3. | | | | | 301 Page 3. |
| Sept. | 1 | To balance bro't over | $558,815 57 | Sept. | 30 | By net earnings for September | 37,120 31 |
| | | Interest on 2d mortg. bonds paid | 39,680 | | | Balance | 576,165 58 |
| | | Do. city bonds ($114,000) paid | 3,797 50 | | | | |
| | | Do. city bonds ($200,000) paid | 6,877 50 | | | | |
| | | Advertising in N. York | 54 48 | | | | |
| | | Exchange, 1 per cent | 504 09 | | | | |
| | 30 | Interest to date | 3,556 75 | | | | |
| | | | $613,285 89 | | | | $613,285 89 |
| Oct. | 1 | To balance bro't forward | 576,165 58 | Oct. | 31 | By net earnings for October | 28,931 16 |
| | | Building road beyond La Crosse depot | 2,656 75 | | | Balance | 570,885 76 |
| | | Disbursements on La Crosse depot | 12,190 95 | | | | |
| | | Payments for right of way | 5,325 00 | | | | |
| | 31 | Interest to date | 3,478 64 | | | | |
| | | | 599,816 92 | | | | 599,816 92 |

DR. *Schedule fourth*—Continued. CR.

| | | | | | |
|---|---|---|---|---|---|
| 1858. | | | 1858. | | |
| Nov. 1 | To balance bro't forward | 570,887 76 | Nov. 30 | By net earnings for November | 22,744 43 |
| | Interest on 1st mortg. bonds paid | 36,940 | | Balance | 601,211 42 |
| | Paid sinking fund on same | 12,000 | | | |
| | Advertising | 21 85 | | | |
| | Exchange | 489 61 | | | |
| 30 | Interest to date | 3,618 63 | | | |
| | | 623,955 85 | | | 623,955 85 |
| Dec. 1 | To balance bro't forward | 601,211 42 | Dec. 31 | By net earnings for December | 12,517 22 |
| | Paid for right of way | 240 | | | 592,442 66 |
| 31 | Interest to date | 3,508 46 | | | |
| | | 604,959 88 | | | 604,959 88 |
| 1859. | | | 1859. | | |
| Jan'y 1 | To balance bro't forward | 592,442 66 | Jan'y 31 | By net earnings for January | 6,415 71 |
| | Paid for right of way | 1,010 | | Balance carried over | 600,618 69 |
| | Do to interest | 254 74 | | | |
| | Gravelling between Milwaukee & Beaver Dam | 9,806 50 | | | |
| 31 | Interest to date | 3,520 50 | | | |
| | | 607,034 40 | | | 607,034 40 |
| 302 Page 4. | | | | | 303 Page 4. |
| 1859. | | | 1859. | | |
| Feb'y 1 | To balance bro't over | $600,618 69 | Feb'y 28 | By net earnings for February | 2,450 62 |
| | Paid for right of way | 579 | | 200 second mortg. bonds, *a* 50 pr. ct | 100,000 00 |
| 28 | Interest to date | 3,056 97 | | Balance | 502,254 04 |
| | | 604,704 66 | | | $604,704 66 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| March | 1 | To balance bro't forward | 502,254 04 | March | 31 | By net earnings for March | 1,561 88 |
| | | Interest paid on 2d mortg. bonds | 39,880 | April | 30 | Do ..... April ..... | 575 21 |
| | | Do ..paid city bonds, ($114,000) | 3,710 | May | 31 | Do ..... May ..... | 14,025 53 |
| | | Do .....city bonds, (200,000) | 6,387 50 | | | Balance | 587,706 15 |
| | | Advertising | 22 40 | | | | |
| | | Exchange | 750 | | | | |
| | | Right of way to J A. Hoover | 3,236 52 | | | | |
| May | 1 | Paid interest on 1st mortg. bonds | 37,100 | | | | |
| | | Advertising | 17 60 | | | | |
| | | Exchange | 556 75 | | | | |
| | 31 | Interest up to March 31st | 3,244 73 | | | | |
| | | Do .....April 30th | 3,244 73 | | | | |
| | | Do .....May 31st | 3,464 50 | | | | |
| | | | 603,868 77 | | | | 603,868 77 |
| June | 1 | To balance bro't forward | 587,706 15 | June | 30 | By net earnings for June | 18,175 59 |
| | 30 | Interest to date | 3,428 28 | | | Balance | 572,958 84 |
| | | | 591,134 43 | | | | 591,134 43 |
| July | 1 | To balance bro't forward | 572,958 84 | July | 31 | By net earnings for July | 662 10 |
| | 31 | Interest to date | 3,342 25 | Aug. | 31 | Do .....August | 19,308 98 |
| Aug. | 1 | Paid for right of way | 1,773 21 | | | Balance | 561,455 82 |
| | 31 | Interest to date | 3,352 60 | | | | |
| | | | 581,426 90 | | | | 581,426 90 |
| Sept. | 1 | To balance bro't forward | 561,455 82 | Sept. | 30 | By net earnings for September | 66,264 48 |
| | 30 | Interest to date | 3,275 15 | | | Balance | 498,466 49 |
| | | | 564,730 97 | | | | 564,730 97 |
| Oct. | 1 | To balance bro't forward | 498,466 49 | Oct. | 31 | By net earnings for October | 71,980 37 |
| | 31 | Interest to date | 2,907 72 | | | Balance carried over | 429,393 84 |
| | | | 501,371 21 | | | | 501,374 21 |

DR. *Schedule fourth*—Continued. CR.

| | | | | | |
|---|---|---|---|---|---|
| 304 Page 5. 1859. | | | 1859. | | 304 Page 5. |
| Nov. 1 | To balance bro't over | $429,393 84 | Nov. 30 | By net earnings for November, paid to Chamberlain | $18,446 73 |
| 30 | Interest to date | 2,504 79 | | Other receipts applicable to operating expenses & charged to the account of "operating expenses," as paid by Chamberlain, but which were paid by trustees and not by Chamberlain | 68,789 73 |
| | | | | Balance | 344,662 17 |
| | | $431,898 63 | | | $431,898 63 |
| Dec. 1 | To balance bro't forward | 344,662 17 | | | |
| | Paid for right of way | 1,262 98 | | | |
| | Accounts paid by Chamberlain & afterwards charged to "operating expenses," to wit: | | | | |
| | S. Chamberlain & Co | 715 30 | | | |
| | D. W Keyes | 230 23 | | | |
| | Beck & Gardner | 110 | | | |
| | Lloyd & Supplee | 57 | | | |
| | Milwaukee Gas Co | 44 10 | | | |
| | Cash paid car notes | 14,195 71 | | | |
| | Trustees (P. Dow) | 11,460 | | | |
| | Old coupons | 195 | | | |
| 1861. Sept. 1 | To interest to date | 45,684 21 | | | |
| | | 418,616 70 | | | |
| | | | 1861. | | |
| Sept. 1 | To balance bro't forward | $418,616 70 | Sept. 1 | By balance | 418,616 70 |

305 *Statement of the real amount of the items of indebtedness included in the judgment of Selah Chamberlain, October 2, 1857.*

| | | |
|---|---|---|
| Balance of ac. as stated in Exhibit No. 10.... | 110, 366 72 | |
| Construction of 43 miles of main line between Portage City and New Lisbon..... | 516, 000 00 | |
| Construction of $2\frac{32}{100}$ miles of side track on same | 27, 840 00 | |
| Grading, bridging, and masonry proportionally equal in value ..... | 168, 275 00 | |
| Extra haul, over 500 feet, as per contract .... | 27, 537 30 | |
| Grubbing and clearing, *a* $300 per mile, proportional..... | 18, 620 00 | |
| Solid rock excavation, 118,557 c. yds., *a* 75 c.. | 88, 917 75 | |
| Loose do. do. 2,400 do. *a* 50 c.. | 1, 200 00 | |
| Roadways, bridges, cattle passes, and changing highways, extra..... | 11, 700 00 | |
| Excavation of foundation and timber on same. | 6, 500 00 | |
| Bank wall, 3,500 yds., *a* $3 00 pr. c. yd ..... | 10, 500 00 | |
| Tunnel approach excavation, extra work, 24,653 c. yds., *a* $2 00 pr. c. yd..... | 49, 306 00 | |
| Tile bridging..... | 2, 500 00 | |
| Tunnel culvert at Kilbourn city..... | 2, 300 00 | |
| Ballasting $45\frac{32}{100}$ miles, *a* $2,000 pr. mile..... | 90, 640 00 | |
| | | 1, 132, 202 77 |
| Deduct from the above— | | |
| Payments and credits as stated in Exhibit No. 10 | 501, 227 00 | |
| Amount necessary to complete track laying, ballasting, and grading on line between Portage City and New Lisbon ..... | 62, 000 00 | |
| | | 563, 227 00 |
| Balance..... | | 568, 975 77 |

Which is the real amount due Selah Chamberlain on the items of indebtedness included in his judgment, October 2, 1857.

306 And the following testimony was taken by the said masters, and filed with their report:

*Testimony of Prentiss Dow, taken by Masters.*

District court of the United States for the district of Wisconsin—In equity.

JAMES T. SOUTTER AND GREENE C. BRONSON
*vs*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Examination of Prentiss Dow, taken in pursuance and by virtue of an order of reference in this cause, made on the eleventh day of March, A. D. 1861.

Monday, 27 May, 1861. Present: Winfield Smith, Jerome R. Brighham, and Increase A. Lapham, masters; J. A. Van Dyke, of counsel for Selah Chamberlain, defendant; M. H. Carpenter, of coun-

sel for defendants Graham & Scott, and Sebre Howard, and the Milwaukee and Minnesota Railroad Company; James S. Brown, of counsel for the complainants.

Prentiss Dow, being duly sworn that the answers he should make on this examination should be the truth, the whole truth, and nothing but the truth, says:

The complainants or trustees first received possession of the La Crosse and Milwaukee railroad, first received through me, as their agent, from Selah Chamberlain, on the 18th day of May, 1860. Before that time, from the first day of December, 1859, and including that day, I had received all the earnings of the road. I received them under an arrangement with Mr. Chamberlain, who operated the road. The object of the arrangement was to have a proper scrutiny over the application of the revenues of the road. I had no control over its revenues for any other purpose. There was a written agreement defining my powers and duties in that respect, prior to my having anything to do with the disbursements. I have the original agreement, which I can produce here.

I have here a statement of the monies received and disbursed on the road while the receipts passed into my hands, that is, from 1 December, 1859, to 18 May, 1860, both inclusive. That statement is, to the best of my knowledge and belief, a correct statement of all the receipts, the sources of the receipts, the disbursements, and the purposes of the disbursements.

(Statement produced, marked Exhibit No. 12, and returned herewith.)

I exercised no other control over the funds which so came into my hands than to see that they were applied according to the terms of the lease or mortgage under which Mr. Chamberlain held possession of the road. The disbursements were all made upon warrants drawn by Mr. Goodrich, manager for Mr. Chamberlain, mortgagee in possession.

307 The last coupons paid on the bonds and mortgage made to the complainants, and specified in the bill of complaint in this cause, were due 1 March, 1859, being paid shortly after that. No interest has been paid accruing since the first day of March, 1859. I believe and have no doubt that the entire number of 1,000 bonds, for one million of dollars, were issued and delivered.

*Examination of Prentiss Dow continued.*

TUESDAY, *May* 28, 1861.

I have here the account from the 19th day of May, 1860, up to the time that the receiver took possession of the road, of the receipts and disbursements of the La Crosse and Milwaukee railroad while under the control of the trustee of the complainants.

(Account presented and attached hereto, marked Exhibit No. 13.)

The statement is correct and true of the receipts and disbursements of the road during that period, to the best of my knowledge. The road was truly and faithfully managed during that period for the best interest of parties concerned, so far as it was in the power of the trustees of the complainants so to manage it.

*Cross-examination of Prentice Dow by the counsel for Graham & Scott, Sebre Howard and the Milwaukee and Minnesota Railroad Company.*

Question. For whom did you receive the revenues of the road from December 1st, 1859, to May 18th, 1860?

Answer. For Mr. Chamberlain for the use of the different classes of mortgages and creditors.

Question. Have you in your possession a contract between Selah Chamberlain and he complainants, Bronson & Soutter, dated 30th November, 1859?

Answer. I have.

(The contract is produced and a copy is hereunto attached, marked Exhibit No. 14.)

Question. Did you receive the revenues of the road from December 1st, 1859, to May 18, 1860, for and on behalf of said trustees, Bronson & Soutter, under said agreement, a copy of which is hereto attached?

Answer. I did, as stated in my answer to the previous question.

Question. What compensation did you receive, and from whom did you receive it, for your services during this time?

Answer. I received compensation running through up to this time, out of the earnings of the road, to the amount of $7,916 67. I think was the amount for 19 months' service.

Question. Who authorized you to receive such pay—Mr. Chamberlain or the said trustees?

Answer. I received it as attorney and agent of the trustees; not anything by agreement with Mr. Chamberlain.

Question. Were you not then acting for the trustees and not for Chamberlain?

Answer. I was employed by the trustees to perform certain duties in connection with the security and foreclosure of the second mortgage, so called.

Question. Was it not distinctly agreed between you and the trustees that your services should be rendered at the expense of
308 bondholders, and not at the expense of said trustees?

Answer. It was not; it was at the expense of the trust, if moneys were received out of the trust, and not to be paid out of the pockets of the trustees personally.

Question. Was your authority to act on part of the trustees in writing or parol; if in writing, have you that writing in your possession, and will you produce it?

(This question is objected to by the counsel for the complainants as immaterial.)

Answer. It was partly in writing and partly by verbal instructions. I haven't a copy now, but I will produce and attach a copy.

Question. Will you state all the verbal instructions you received from the trustees, stating particularly when and where, and from which trustee you received them?

Answer. I can state the substance, but can't state every item, nor the time, nor place, though I can generally tell the place. The general instructions were at various times from Judge Bronson, in sub-

stance, to consult counsel here. Take every necessary measure for the collection of the interest and foreclosure of the mortgage.

Question. Did you ever receive any verbal instructions from either of the trustees which enlarged or changed the nature of your powers, or the terms and conditions upon which they were to be exercised, from those set down and stated in the written authority you have spoken of?

Answer. I am not certain at this moment, because I have not the power of attorney before me. I think no instructions have been given which enlarged the powers granted or the duties imposed, or restricted the terms in any shape. The power under which I acted and am acting in its terms gives the same power that the trustees had, to do all that they could do.

Question. Had there been, at any time, any verbal arrangement between you and the trustees in relation to compensation for your services?

Answer. Nothing fixing any amount. There has been conversation, and *this stated*, that they had given me full power, as much as they had under the trust deed. Judge Bronson stated that, under the trust deed, the trustees were empowered to employ such attorneys, agents, &c., as might be needed, and, under that, I was appointed with power of substitution. The conversation went to this point, that they were, of course, authorized to pay the same out of any moneys coming into their hands.

Question. Have you stated all that has ever taken place between you and the trustees in relation to compensation for your services; if not, will you please state it?

Answer. I think I have stated the substance.

Question. What service have you performed for which you charge since the road was put into the possession of the receiver?

Answer. I have been in constant attention to the progress
309 and details of the foreclosure suit.

Question. What specific thing have you done or suffered with reference to that suit since the appointment of said receiver?

Answer. I have been in constant consultations with counsel, and have been employed in the arrangement and preparation of the papers and the proceedings. I have attended divers trials and hearings. I have also had consultations with bondholders and the trustees in New York.

Question. What particular paper or proceeding have you prepared?

Answer. I can't name particular papers. But almost every paper has been under my supervision.

Question. Can you name any one or more papers prepared by you?

Answer. I have prepared abstracts of accounts of the receipts and disbursements for exhibition in court, and attended the examination of the testimony given in the case, and generally examined the papers with Mr. Brown, counsel for the complainants.

Question. What compensation have you allowed yourself, and how is it paid—by the month, or in what other way?

Answer. I allowed myself compensation at the rate of $5,000 per annum, and for a portion of a year in that proportion.

(Adjourned till Wednesday, at 2½ p. m.)

WEDNESDAY, 29 *May*, 1861.

Question. Have you a copy of the power of attorney under which you acted?

Answer. I have. This paper is it.

(Paper produced and attached hereto, marked Exhibit No. 15.)

Question. Have any of the bondholders mentioned in said power of attorney ever paid you anything for your services in this matter?

Answer. They have furnished a certain amount of funds to be used by the chairman of the bondholders' committee in general expenses.

Question. Has any portion of that sum been appropriated or applied to pay for your services under the power of attorney?

Answer. None has. The bondholders have paid me nothing. I believe the vouchers for the disbursements mentioned in the account, exhibit No. 12, are all here in the railroad office.

Question. What items make up the entry "miscellaneous, $2,739 91, under date January, 1860, in this account, Exhibit No. 12?

Answer. It is for the repayment of monies advanced by me for the use of the road. I had remitted $1,633 35 by my own check, on New York, to pay the Grand Trunk Railroad Company for balance on ticket account, also another payment was to Charles H. Barrett, treasurer of the Vermont Central Railroad Company, $637 96, for balance on ticket account. I paid in cash to the road here other sums of
310 money. The cash paid to me was as follows.

| | | |
|---|---|---|
| February 4, 1860. | For coupons presented by Newcomb Cleveland, and paid | $1,460 00 |
| February 4, 1860. | For coupons | 100 00 |
| | For cash paid me | 368 14 |
| | " " " " | 811 77 |
| | Total amount of entry | $2,739 91 |

Question. Will you here state and give an account of all the monies received by you from the cashier, and all the sums advanced by you or paid by you for the railroad business?

Answer. The items are as follows: The sums received by me are—

| | | |
|---|---|---|
| January 23, 1860, | cash | $1,145 19 |
| " " " | " | 368 14 |
| " 31, " | " | 811 77 |
| " " " | for coupons | 1,560 00 |
| February 24, " | cash | 1,010 74 |
| " 29, " | " | 100 00 |
| March 20, " | " | 100 00 |
| April 18, " | " | 65 90 |
| " " " | " | 411 11 |
| " " " | " | 100 00 |
| May 18, " | " | 136 25 |
| June 9, " | " | 436 48 |
| " " " | " for State treasurer | 6,654 93 |
| | | $12,900 51 |

The sums paid out by me are—

| | |
|---|---|
| January 31, 1860, cash | 2,152 55 |
| February 29, 1860, " | 100 00 |
| " " " " | 100 00 |
| March 31, " " | 3,054 40 |
| " " " " | 100 00 |
| " " " " | 65 90 |
| April 30, " " | 100 00 |
| " " " " | 136 25 |
| June 9, 1860, cash | 436 48 |
| " " " " | 6,654 93 |
| | $12,900 51 |

These include the items before mentioned by me, and are taken from the bookkeeper's ledger.

Question. Have you any vouchers for the sums charged by you in the above account, showing the payments by you?

Answer. I have here the receipt of the State treasurer for $6,654 93, also a voucher for the payment to the Grand Trunk
311 Railroad Company $1,633 35, which is included in the first item of the foregoing account, charged to me, ($2,152 55.) I paid $19 20 for advertising in the New York Times the time and place of paying the coupons. I also deposited $500 cash to the credit of the company in the Juneau Bank in this city. I think I gave them my check on Mitchell's Bank, and that they deposited it in the Juneau Bank. These make up the item of $2,152 55. In February, 1860, I sent to Mr. Crocker my check for $100 twice, which was charged three times, once by mistake, and the amount was afterwards returned by him, and the items were balanced. I sent past due coupons to the trustees of the first mortgage as so much cash, to the amount of $1,760. There was paid to me, as part of my compensation and expenses, $1,224 26. I paid also marshal's fees, $70 14. These last three constitute the item of $3,054 40. The last two items compose part of the charge for the foreclosure expenses. The next $100 item was made to correct the $100 erroneously credited me, as I have stated. The item of $65 90 is for postages, stationery, &c., paid out by me, and refunded to me. Some brick for depot are included in it. The next item of $100 is the erroneous charge of cash paid to Mr. Crocker. Here is the statement of the charges making the item of $136 25. Here is the statement of the charges making the item of $436 48.

THURSDAY, 30 *May*, 1861.

The depot building item in the account, under date of January, 1860, is for the building at the junction of the Chicago & North-western Railroad.

The item under date of January, 1860, "Rolling stock, $7,215 45," is for money paid on notes of Mr. Chamberlain, given for rolling stock, and secured by chattel mortgage on the same stock. The item under

date of February, 1860, "Rolling stock, $3,900," is for additional notes paid, so also the item "Rolling stock, $3,080 20," under date of May, 1860.

I paid out of the earnings of the road which came to my hands the State tax for 1858, $4,924 54. Mr. Chamberlain did not pay me the money.

Question. Will you give us a statement and detailed account of all monies which came into your hands after December 1, but which were earned by the road before that time, and a detailed statement and account of all monies paid out by you on and after December 1, on indebtedness incurred previous to that time?

Answer. I have presented here a statement, (Exhibit No. 12,) which embraces details as far as I can give them; Mr. Keyes and the bookkeeper, Mr. Jennings, could state distinctly the items.

Question. Can you tell from Exhibit No. 12 how much was received and paid out by you as inquired of in the last question?

312 Answer. I am unable to separate the amounts received on earnings previous to December 1, from the earnings subsequent to December 1, and so with the disbursements.

Question. Will you procure and exhibit here such statement and account as a part of your accounting before the masters?

Answer. I don't see that I can.

(Mr. Carpenter makes and files a written demand, herewith returned and dated May 30th, 1861, to which Mr. Van Dyke, of counsel for Mr. Chamberlain, states: Mr. Chamberlain does not propose to have his account connected with the account of any other person. He has gone through with his whole account, and closed it some two weeks since. His account, debit and credit, fully appears in the testimony taken on his behalf, item by item, in connection with which the books of the company, showing the operating expenses, the income of the road, were exhibited; and the monthly vouchers, particularly scheduled, were also exhibited, from which the income and disbursements up to 1 December, 1859. An account stated, showing the monthly receipts and disbursements, was presented to the masters, scheduled by one of them, and on application of the counsel for the Minnesota Railroad Company, Graham, Scott, and Sebre Howard, it was withdrawn by the counsel for Mr. Chamberlain, and the schedule number erased therefrom by one of the masters. The account now asked for, charging Chamberlain every cent he ever received out of the road, and crediting him every cent he has paid out on account of the road, would involve making a complete copy of the books of account during the time Chamberlain operated the road, and also the vouchers and pay-rolls, which would involve not less than from six months to twelve months' labor with a bookkeeper, and an expense of not less than one or two thousand dollars. The books, vouchers, pay-rolls, are open to the examination of the parties demanding the account of every cent of receipts and of disbursements, and they are at liberty to make up one therefrom at their own expense, but Mr. Chamberlain, on his part, objects to having this case further delayed under the subterfuge of the character in the demand stated, which he believes is done for the purpose of delay merely.

Mr. Carpenter, in reply, states that he has had the general charge of this case for the parties he represents, but on one or two occasions, when it was impossible for him to be present, and when he was unable to procure an adjournment, he has been represented by Mr. Prentiss, who may have objected to the filing of such an account, but he, Mr. Carpenter, never made such an objection, and he claims that it is the duties of the parties to present such an account; that if they do not present it, the masters will have to make one; that the parties have facilities for making it in shorter time than the
313 commissioners, and he here distinctly states that for any reasonable length of time, to make up such accounts by the parties, he consents to an adjournment.)

WEDNESDAY, 5 *June*, 1861.

Prentis Dow, being further examined, says:

I here produce the accounts and statements requested of me.

First. An account of all the monies received by me since 1 December, 1859, which were earned on the road prior to that time, and either collected by me or passed into the accounts of the road under me in part payment of operating expenses, which is marked Exhibit No. 16.

Second. A detailed account of all monies paid out by me after 1 December, 1859, on indebtedness of the road incurred before that time, marked Exhibit No. 17. (Papers produced, numbered Exhibits 16 and 17, and filed herewith.)

*Re-examined.*

I have a statement of my aggregate receipts and disbursements on the road while they passed through my hands, taken from the general books of the road. This is the paper, marked Exhibit No 18.

(Paper produced and filed herewith, marked Exhibit No. 18.)

When I, as agent for the trustees, first took possession of the earnings of the road, a balance sheet was made out to show the amounts due to and from each of the roads which sold tickets to go over the La Crosse road, and tickets over which were sold by the La Crosse road, and the individuals and companies furnishing supplies for the road or dealing with it. I have presented in Exhibit No. 17 a full list of all those credit balances which I paid, amounting to $68,789 73. The notes of Mr. Chamberlain, given on account of rolling stock, to the amount of $14,195 71; cash received from him to the amount of $11,460; earnings paid in to me which had accrued prior to 1 December, 1859, $21,085 49; balances due the road 1 December, 1859, collected or realized by me to the amount of $515 63, the two last items being included in Exhibit No. 16, making altogether the sum of $47,256 83, were applied, under a verbal agreement between Mr. Chamberlain and myself, to the reduction of the large list of balances which proved to be due from the road 1 December, 1859, as stated in Exhibit No. 17. I now present an exhibit, No. 18, of the whole receipts and payments from the time I first took the receipts of the road until I surrendered the road to the receiver.

(Paper produced and filed herewith, marked Exhibit No. 16.)

I have here, and produce, a receipt given to me by the treasurer of the State of Wisconsin for State tax paid by me on the road, $4,924 54. (Paper produced and exhibited.) I applied to the payment of rolling stock, through Mr. Chamberlain's payments on his notes, as before stated, $14,195 71. I paid upon incumbrances on the depot
314 grounds, real estate of the road, $16,823 73, and have here for examination the vouchers. (Papers produced and exhibited.)

I present herewith a list of those payments on incumbrances.

(Paper produced and marked Exhibit No. 19.)

I paid on right of way claims against the road, of which I present a schedule, amounting to $3,184 57. (Paper produced and marked Exhibit No. 20, herewith filed.)

I paid also for the depot at Minnesota Junction, to the Chicago & Northwestern Railroad Company, which built it, for one-half of the depot, eating-house, and real estate at Minnesota Junction, $2,059 14, and I here exhibit for inspection the drafts of the assistant treasurer of that company on me.

There was due to the road June 9th, 1860, several balances set out in this schedule, marked Exhibit No. 21, amounting to $1,172 79, which were after that date collected by the receiver.

(Paper produced and marked Exhibit No. 21, and filed herewith.)

I paid to the trustee of the first mortgage on the road $38,513 26 for interest due on that mortgage 1 November, 1859, and prior to that time, and I exhibit here his receipt therefor.

(Paper produced and exhibited.)

I produce a list of disbursements made by me under the trust deed, amounting to $13,386 14.

(Paper produced, marked Exhibit No. 22, and herewith filed.)

These make the disbursements.

The earnings which I received from the road in gross are $288,960 39 from 1 December, 1859, to 9 June, 1860.

The operating expenses during that time were $197,585 66, leaving a net income of $91,374 73. Of the operating expenses, there was paid by S. Chamberlain, on account of S. Chamberlain & Co., $715,30; and also George Aberts' account, $226 57; D. W. Keyes' account, $230 23; Beck & Gardner's account, $110; making together the sum of $1,282 10. From which should be deducted bills paid for the steamer Keokuk by me, $573 74, leaving a balance to go with income against the trustees of $708 36. There was due from the road, on account of foreign balances and operating expenses, 9 June, 1860, $44,503 56, a list of which balances I herewith present, the same being charged in account to the trustees.

(Paper produced and filed herewith, marked Exhibit No. 23.)

Mr. Chamberlain knew and approved of the payments on account of the Keokuk, which were charged to him against the account of monies advanced and paid by him.

*Cross-examined.*

315 Question. Have all the disbursements charged by you in Exhibit No. 22, and amounting to $13,386 14, been made by

you while acting under the power of attorney, a copy of which is produced by you—Exhibit No. 15?

Answer. Yes.

Question. Was this suit commenced and has it been prosecuted by you under and in pursuance of that power of attorney?

Answer. Yes, sir.

SATURDAY, 8 *June*, 1861.

Prentiss Dow, being further cross-examined, says:

Question. Have you already actually made and paid all the items of disbursement stated and charged in Exhibit No. 22, (marked also F,) including $1,000 to Wheeler, and $1,000 to Randall?

Answer. I have, all but $250 to Brown & Ogden, not yet paid.

Question. Does this item, $13,386 14, include all that has been in any way, directly or indirectly, allowed or paid to you for services, travelling expenses, and all other things, since the 1 December, 1859?

Answer. It does.

Question. Are any of these entries for operating expenses, &c., made up of or do they include any of your personal expenses or services?

Answer. They do not.

Question. What is the balance of monies now remaining in your hands, received by you from all sources on account of the railroad, property, and franchises, since 1 December, 1859?

Answer. I think $20,794 87.

Question. Did you, at any time, remit to the trustees of this second mortgage, (so called,) for interest, $12,837 76, or any other sum?

Answer. I remitted to Mr. Palmer my co-attorney, for the use of the trustees or for the trust fund, in all $18,000. It was remitted at different times.

Question. Do your accounts show the amounts received and disbursed by you each month, respectively, so that interest can be cast from the end of each month?

Answer. They do.

Question. Have you the vouchers, or are they in the railroad office, for the amount $68,789 73, credited in your account?

Answer. They are all in the railroad office, scheduled month by month.

Question. In the receiver's report there is an item of $1,112 $\frac{60}{100}$, charged as "legal expenses in foreclosure suits." Is that item included in the expenses on your Exhibit No. 22?

Answer. It is not, and should not be.

Question. Have you, since the appointment of the receiver in this suit, rendered any service for him, or made any contract for him, for or on account of which you have received any compensation, or
316 made, received, or realized, any profit or advantage, directly or indirectly? If yea, state fully.

Answer. I have been engaged the greater part of the time since the appointment of the receiver, in consultations as to business matters. I have one journey to St. Louis, several to La Crosse, one to St. Paul, and have had large share in making the contracts with the Minnesota

Packet Company, for boat service on the river. Mr. Crocker has generally counselled with me, and called for my assistance in matters of right of way and other general business of the railroad. For all this, the only benefit on money that has passed between us was out of my own pocket for expenses, I never having received a dollar from him, or in any other shape, except as in Exhibit No. 22. I have not received any compensation for any services rendered to Mr. Crocker, nor have I received any benefit from any contracts made for him.

Question. Did you last year make a contract, or at some other time, with the Minnesota Packet Company, or some other packet company, on behalf of the receiver?

Answer. I discussed and agreed upon the terms of a contract with the officers of the packet company, although I did not execute it.

Question. Did you ever receive, or are you to receive, any compensation, speculation, or profit, from any person or persons, on account of, growing out of, or in consequence of having settled the terms of that contract?

Answer. I have received nothing, expect nothing, hope nothing, and have had the promise of nothing, for any contract or services in relation to or about contracts concerning the La Crosse railroad.

Question. Since the appointment of the receiver in this action, about what proportion of the time have you been in this State, and what proportion of the time elsewhere?

Answer. I was absent on a visit to New York, from about the last of July to the tenth of August, 1860; in September, 1860, I was absent about 25 days; in November, 1860, I was absent on a visit to New York about 14 days; in January, 1861, I was absent about 15 days, I think; about the last days of March I left, and returned the 22 May. With these exceptions, I have been here all the time.

Question. Are you owner of any of the bonds secured by the mortgage being foreclosed in this suit?

Answer. I am.

Question. Were you not selected to do what you have done by the different owners of such bonds?

Answer. Indirectly but not directly. At a meeting called of the bondholders generally, a committee of five was appointed to take the whole charge of the interests of the bondholders. That committee selected me to take the active charge.

317 Question. Did you, subsequent to that and in pursuance thereof, obtain from the trustees the power of attorney, a copy of which is hereto attached, and have you not since that time been acting under it?

Answer. I did, and have.

PRENTIS DOW.

MONDAY, 26*th August*, 1861.

Prentis Dow, being further examined, says:

Question by Mr. Ogden, counsel for complainants. Look at the Exhibits 12, 13, and 18, and explain the apparent discrepancies between them.

Answer. I now say Exhibits 12 and 13 are a summary of the cash transactions of the cashier's office only, including what may be called trust funds and promiscuous accounts, as well as earnings proper. The items of "freight income," in the Exhibits 12 and 13, are subject to reductions by settlements with other roads for their proportion of the freight collected and paid into the cashier's office, and to further deductions for "back charges" and sundry other items. In the same way of the "foreign ticket account" for foreign tickets sold. The amount received is distributed monthly among the various roads over which these tickets are sold, and goes to make up the foreign balances which appear in these exhibits, (12 and 13.) These distributions, transfers, and settlements are made in the general bookkeeper's department, the results of which appear in the general statement, Exhibit 18.

The operating expenses, foreign balances, and other payments are made upon warrants drawn by the manager of the road. These payments are made as the parties call for their money, and often balances remain some time to the credit of the respective parties. Operating expenses and other balances, whenever they are authenticated or settled, are entered to the credit of the respective parties, and paid only as they may be called for afterwards. This accounts for the accumulation of balances due from the road at the close of Mr. Chamberlain's administration, and also at the time the receiver took possession. With a view of showing Exhibit 12 more in detail, I produce this account, (Exhibit No. 25.) I have also discovered an error in Exhibit No. 13 in the item charged as foreign balances, for the purpose of correcting which I present this statement, (Exhibit No. 26.) Exhibit No. 18 is an abstract from the general ledger of the accounts as kept by the general bookkeeper. This shows the earnings and the expenses, after all settlements are made, with the various branches of receipts and disbursements. The items "operating expenses" show the amounts credited to the different parties for labor and supplies during the month, and not the amount actually paid during the month for operating expenses. I have also discovered an error in this exhibit of $259, made up of the following items which had been
318 paid by Mr. Chamberlain, namely: Lloyd & Supplee, $57; Milwaukee Gas Co., $44 10; and the following balances, mentioned by Mr. Keyes, liquidated by "operating expenses," namely: J. G. Inbusch, $121 80; J. Swain, $36 10; the four making up the sum of $259. For the purpose of making this more plain I present an account, (Exhibit No. 27.)

I will also add that I mentioned in my former testimony that I had promised Brown & Ogden $250, not then paid, which I have since paid.

The balance in the exhibits now produced is the same shown to exist against the trustees on the general books of the road The balance on Exhibit No. 13, $19,556 55, is erroneous, and does not agree with the general books of the road. The exhibits now produced have been compared with the general books of the road, item by item, and agree with them. The warrant book will show all the disbursements except those for trustees' expenses. The items of dis-

bursement for "rolling stock" are payments made for rolling stock on the road, and previously purchased.

The semi-annual interest on the first mortgage bonds is $38,000. The amount in Exhibit No. 27, $ 8,513 26, under the head of first mortgage interest, includes interest due and unpaid and the charges for paying. The amount, $38,513 26, was paid by me to Mr. F. A. Palmer, trustee of the first mortgage, and I have taken and exhibited to the masters his receipt therefor.

The item in the account, Exhibit 22, "June 25th, 1860, exchange on N. Y.," is for exchange on money remitted to New York, part on the first and part on the second mortgage bonds, I think.

I think that $2 80 of the amount, $73 19, in the same account, is for recording deeds of right of way, and the rest is for marshal's fees in this suit.

PRENTIS DOW.

*Deposition of E. H. Goodrich.*

District court of the United States for the district of Wisconsin—In equity.

JAMES T. SOUTTER AND GREENE C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, Trustees,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

Examination of a witness taken in pursuance and by virtue of an order of reference in each of these causes, of the eleventh day of March, A. D. 1861.

SATURDAY, 25*th May*, 1861.

319 Present: Winfield Smith, Increase A. Lapham, and Jerome R. Brigham, *masters;* J. H. Van Dyke, of counsel for Selah Chamberlain, defendant; Levi Hubbell, of counsel for Sebre Howard, defendant; John W. Cary, of counsel for the complainants in the last-entitled cause.

Edwin H. Goodrich, being called as a witness on the part of the complainants in the said causes, and having been previously sworn, testifies:

This map I believe to be a correct map of the road bed and the real estate of the La Crosse & Milwaukee Railroad Company in the city of Milwaukee. It is called the map of the land line of the road. A copy is filed in the office of the secretary of state at Madison. (A copy, marked Exhibit No. 11, is to be hereto attached, showing the particulars of the lots owned by said company in said city, including those sold on the executions on the Howard judgments.) The road bed is marked on the map, together with the numbers of the lots in question. The lots in block one are occupied or necessary for the use

of the road; also the lots in block thirteen. The lots in blocks fifteen, sixteen, nineteen, and twenty have never been occupied by the road, but were purchased with the intention of erecting upon them, with others, a grain elevator for the use of the road, and running a track to them on the east side of the canal, from a point near the dam. The design was to purchase and use the lots from a point near the dam down to the foot of the island, embracing the canal lots purchased with others to be purchased. Lot eight, in block twenty-two, is not used for the purposes of the road. Lot sixteen, in that block, is used for the road. All the lots in block thirty are used for the purposes of the road. So also the lots in block thirty-three. Lots in block forty are also used for the purposes of the road, except the southwest corner of block ten, on Third street, and that part of lots eight or nine on which Enno Myer's brick drug store is situated. The company owns that brick building, (the drug store,) but not the buildings on the southwest corner of lot ten, which are three small wooden buildings, owned by the parties occupying the ground. The company leases the Myer building to Myer, he being obliged to leave it on a short notice from us. So the lot covered by the wooden buildings was only temporarily suffered to be used by the occupants. Neither they nor Myer have any regular lease. The company has occupied all those parcels of land. They have ceased to occupy them within two years. Myer has occupied his premises ever since he owned them, and the company has never occupied the building now occupied by him, nor the ground on which it stands, but it occupies all the remainder of the lot. It was one of the conditions of the purchase that he should be allowed to occupy the building for a definite time, which has now elapsed. The whole of the property on which these houses stand is necessary for the convenient use of the road, either now or prospectively. The leases are merely at will, because we did not know how soon we might want to use the property. We need it for the purpose of depot buildings. The passengers are now landed on block forty-one, and the station-house is here, but the cars stand on block forty also.

320

The lots in block thirty-three in Sherman's addition are presently necessary for the road bed. The ground in block forty-seven is occupied by the road. So also the ground in block forty-eight. So also the land in the reserved acre, which is used a road bed and a barrowing pit. The canal lots have never been occupied by the road, but were bought, as I have stated, to lay the track upon to the foot of the island. The ground in lot eighty-three is used and occupied by the company for a road bed and wood yard. The lots in block fifty, in the seventh ward, have never been in any manner used by the railroad company.

Blocks forty and forty-one are used as and called the depot grounds. The company has not constructed a permanent grain or passenger depot in Milwaukee. In my opinion, the whole of blocks forty and forty-one are requisite for those purposes, and they were intended for them. We have not depot buildings now adequate for the use of the road, and for want of them we have been obliged to haul grain in bulk to private warehouses in the fourth ward, over half a mile from our depot. There is not room enough on the whole of blocks forty

and forty-one for the depots now required for the use of the road. We need for the present use of the road, for the business now doing, as much again land and buildings as we are now using for depot purposes. We occupy 760 feet of river front only. Higby has a warehouse there on block forty-one, of which the company has the exclusive benefit so far as use or occupancy is concerned.

The company has an agreement with Higby that he should receive all the grain we send to him at prices fixed in the agreement, for which he charges the grain owners. 360 feet of the water front of block forty is occupied by a warehouse owned by the company. The water fronts of lots one, two, and part of lot three, in block forty-one, is occupied by a grain elevator. The remainder of the water front of lot three, of lots four, five, six, seven, and of a part of lot eight, is used for receiving railroad iron and heavy freights. The remainder of the water front of lot eight, and of lots nine and ten is covered with a shed warehouses, and is for receiving and storing rolling freight. We occupy nearly the entire street front of block forty-one for passenger purposes. We have no buildings on the street front of block forty. We could use it to very good advantage if we had the means to build. I have spoken above only of the land owned by the railroad company.

At the date of the first mortgage there was no rolling stock on hand, June 30th, 1854. At the date of the mortgage to Bron-
321 son and Soutter, August 17th, 1857, the cost of the rolling stock on hand was $544,492 16.

At the date of the land grant mortgage, 31 December, 1856, the rolling stock on hand cost $455,001 06.

At the date of the order of reference in these causes, (11 March, 1861,) the cost of the rolling stock on hand was $623,235 78.

None of the rolling stock was purchased with land grant bonds, but part of it was paid for with proceeds of the land grant bonds. Out of the proceeds of those bonds, (issued under the mortgage to Bronson, Soutter & Knapp,) three thousand dollars was paid for the right to use a car brake, and thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents were paid for forty box cars. The entire amount of rolling stock is about all on hand at this time, scarcely any having been destroyed.

The whole sum paid for rolling stock out of the earnings of the road since 31 December, 1858, is $78,743 62, besides some small sums for transportation of rolling stock. Besides that, payments have been made out of the general earnings of the road for building rolling stock in the company's shops, on the eastern division of the road, as per report of the receiver, made December 31, 1860.

EDWIN H. GOODRICH.

*Deposition of Wm. R. Sill.*

District court of the United States for the district of Wisconsin—In equity.

JAMES T. SOUTTER & GREENE C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

GREENE C. BRONSON, JAMES T. SOUTTER & SHEPHERD KNAPP, Trustees,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

Examination of witnesses taken in pursuance and by virtue of an order of reference in each of these causes, of the eleventh day of March, A. D. 1861.

TUESDAY, 9 *April*, 1861.

Present: Winfield Smith, Increase A. Lapham, Jerome R. Brigham, *masters;* J. A. Van Dyke, of counsel for Selah Chamberlain, defendant; M. H. Carpenter, of counsel for defendants Graham and Scott, and Sebre Howard; and the Milwaukee and Minnesota Railroad Company.

William R. Sill, being produced on the part of Selah Chamberlain and duly sworn, says:

322 I reside in La Crosse, Wisconsin. My age is thirty-eight. I am by profession a civil engineer, and was in active service from 1844 to 1856. I was engineer of the La Crosse railroad; chief engineer for about two years and a half, ceasing in the spring of 1856. I was employed in March, 1858, by the La Crosse and Milwaukee Railroad Company, to make a re-estimate of the work which had been done upon it (on the western division) up to October 1st, 1857. Mr. E. W. Woodward acted with me in making that estimate. This paper in my hand is the estimate made by us at that time—an original.

We had access to all the notes, papers, profiles, the plans, and working notes of the engineers, to all existing contracts of which we had any knowledge, and we made up our estimate from them and from the measurements we took ourselves. We reduced that re-estimate, as so made by us, to writing. I think we referred in that to the contracts to which we had access. We had access to the contracts therein referred to. This paper is that estimate. It was made about three years ago. I can't recollect the amount of the particular items made up at that time. I can swear to the gross amount from recollection. It was between $1,040,000 and $1,050,000. We estimated the amount of all the work which had been done on the line of the road from Portage City to La Crosse up to 1 October, 1857.

Question. Can you now, by reference to the estimate then made, state what work you then estimated?

(Objected to by Mr. Carpenter as immaterial. Admitted.)

A. The road was very nearly completed from Portage to New Lisbon, about 43 miles. There was also a large amount of work done at the tunnel, and work done at various places between the tunnel and La Crosse. There was also $2\frac{32}{100}$ miles of side track between Portage and New Lisbon. There was also quite an amount of rock cutting and rock taken out of the excavation; also a large amount of earth, which had been hauled over 500 feet. The grubbing and cleaning had been done to New Lisbon, and some beyond. There had been some road way bridges, cattle passes, &c.; some bank wall; some pile bridging; a tunnel culvert at Kilbourn city; some ballasting done between Portage and New Lisbon; also an item that we considered extra, for grading depot grounds at Kilbourn city. We also estimated Chamberlain's damage for change of line and detention at New Lisbon. Those make up the items of the estimate. The 43 miles was main line.

(The counsel for the defendant Selah Chamberlain objects that the defendants, judgment creditors of the La Crosse and Milwaukee Railroad Company, have no right to take part in the proceedings under the order of reference, and that no other defendants have
323 such right. The counsel makes the objection at this point in order to preserve his rights on the coming in of the masters' report. The objection is overruled.)

I don't know who did the work so estimated by us. We measured all the side tracks between Portage and New Lisbon and found there were $2\frac{32}{100}$ miles. The third item is grading, bridging, and masonry. There was some grading done between New Lisbon and Orange, (4 miles west,) I think; there was a large amount done at the tunnel and good deal between the tunnel and La Cross; I think there was some bridging and masonry also done, but how much I don't remember.

(At this point a stipulation was made and filed by the parties appearing, whereupon the examination of the witness, Wm. R Sill, was interrupted and postponed, with the understanding that he is to be recalled.)

*Deposition of E. C. Jennings.*

WEDNESDAY, 10 *April*, 1861.

Present: Messrs. Brigham, Lapham, and Smith, masters; Mr. Carpenter and Mr. Emmons, of counsel.

Edgar C. Jennings, being sworn on the part of the defendant Chamberlain, says: I reside in Milwaukee; I have been keeping the general accounts of the La Crosse & Milwaukee Railroad and the Milwaukee & Minnesota Railroad for the last five years; I was formerly in the employ of the La Crosse & M. R. R. Co.; I was chief clerk in the superintendant's office, and for the last three years also ticket agent; I know when Mr. Chamberlain went into possession of the railroad; it was about the 1st October, 1857; I think I was employed by him, keeping the same accounts afterwards or before—in a new set of books; I kept the same books as are usually kept in a su-

perintendant's office, containing accounts of the earnings and expenses of the road—what would be called the general books in the operating department; I kept the income accounts, the operating accounts; the books are here, so that I can produce them; I get my entries from the cashier, the general freight agent, and the general ticket agent; Mr. Chamberlain had possession of the road from October, 1857, to November, 1859—what day in November I can't say; the books were balanced at the time when he ceased to receive the earnings; I made up my income account for the month all together, and do not know how the receipts were divided between Mr. Chamberlain and Mr. Dow; the money which came in after the 30th November, which had been earned previously, all went into the hands of Mr. Dow. I think I can give a statement of the total earnings and total expenses of the road during the time from 1 October, 1857, to 1 December, 1859; I have such a statement here. The earnings for November are all included in this statement, although part of them were received
324 by Mr. Dow. (Paper produced and hereto attached, marked Exhibit 1.) This statement is made up from the books kept by me; the original books, from which this statement is made up, are in my possession here.

(Books exhibited. "General ledger La Crosse & Mil. R. R. Co.; *S. Chamberlain* mortgagee in possession; journal same.")

These books are the account of the earnings and expenses of the La Crosse & Mil. R. R. while in Mr. Chamberlain's possession. The first set of books are these.

(Books exhibited, marked ledger and journal, L. C. & M. R. R. Co., S. Chamberlain lessee; ledger marked A.)

I think Mr. Chamberlain received none of the earnings of the road earned during the month of September, 1857. The cashier's duty is to receive cash and act as treasurer of the road; he gives me duplicate receipts, from which I make up the amount. D. W. Keyes was cashier of the road while Mr. Chamberlain was in possession.

The general ticket agent issues tickets.

These books and this account are correct, so far as I know, and embrace the entire amounts received and disbursed during the period mentioned, so far as I know. The duplicate receipts handed to me, on which I have made my entries, are here in the La Crosse & Mil. R. R. depot building, embracing the period of this account.

(Mr. Chamberlain's counsel offers to exhibit to the masters and the counsel all the books and vouchers mentioned.)

*Cross-examined.*

I have no knowledge of the amount of money received by Mr. Chamberlain from the road in October, 1857, beyond what the books state. The total earnings of the road for that month were $16,352 18; I don't know whether Mr. Chamberlain received any more than that sum from the road; I know these are the earnings for October, 1857, because the figures show it; I get the figures from the returns made to me; I have only these statements, and have no personal knowledge whether those statements are correct.

The amounts of the expenses are furnished me by the manager of the road. At the end of the month the bills are sent in, made into a schedule, and handed to me to enter. The bills are handed into the superintendant (or manager's) office by those persons of whom they are purchased. They had to be supervised by the proper officer, examined by the manager, Mr. Goodrich, to see if they were correct, made into a schedule, and entered on my books to the debit of "operating expenses," and credited to the parties of whom purchased. The first that I saw or knew about them was that certain papers or
325 documents were handed to me as bookkeeper; if they were found to be correct, they were entered on the books; I merely had the entering of them on the books, and had no other supervision of them; I act only as bookkeeper; the papers are certified before I enter them; I do not enter papers hap hazard. As near as I can remember they were handed in to the manager's office; I don't know whose duty it was to collect them and keep them together; the bills were directed to be sent to the manager of the road monthly, I believe.

I got at the receipts from the cashier's statements, of which these are specimens. These are the statements for October, 1857. He gave me what we called duplicate receipts for the money received by him. I entered them in the books as I got them. Dwight W. Keyes was then cashier. Persons to whom credit was given on our books for their bills were not always paid the same month. The conductors brought in packages of money received on the road, which I know went into the hands of the cashier. I can't personally state how much money so went into his hands. I had access to the general freight ledger, (although I did not keep it,) and by that ledger it appeared that the agents made correct returns. That ledger was compared with their returns, and was a check upon them. The person who kept that ledger compared the entries on it with the cashier's returns. I do not know of my own knowledge whether the entries in the freight ledger were correct. It was not my business to compare that ledger with the returns. I sometimes did it; sometimes the freight agent did it alone.

The item of disbursements for October, 1857, embraces supplies and other items shown by the vouchers. Those vouchers are in the building here. I do not remember the amounts. I get the amount from pages 160 and 164 of ledger A. That book does not show the items embraced in that sum, but only the gross amount of expenses for each month. The journal shows the amount of each account and of each item. These entries in the journal were generally entered in the ledger once a month in one item. The journal is paged. The page of the journal on which is the entry of the expenses for October, 1857, is 24. It is in my handwriting. One item is some $14,000 charged to Mr. Goodrich, manager, for which he is credited when the disbursements are made. This entry was made by me as given to me. It is the pay-roll item. I can't say by whom this item was given to me, but I presume by Mr. Goodrich's authority. I did not, of my own knowledge, know how much Mr. Goodrich paid. That was no part of my business.

perintendant's office, containing accounts of the earnings and expenses of the road—what would be called the general books in the operating department; I kept the income accounts, the operating accounts; the books are here, so that I can produce them; I get my entries from the cashier, the general freight agent, and the general ticket agent; Mr. Chamberlain had possession of the road from October, 1857, to November, 1859—what day in November I can't say; the books were balanced at the time when he ceased to receive the earnings; I made up my income account for the month all together, and do not know how the receipts were divided between Mr. Chamberlain and Mr. Dow; the money which came in after the 30th November, which had been earned previously, all went into the hands of Mr. Dow. I think I can give a statement of the total earnings and total expenses of the road during the time from 1 October, 1857, to 1 December, 1859; I have such a statement here. The earnings for November are all included in this statement, although part of them were received
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The general ticket agent issues tickets.

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(Mr. Chamberlain's counsel offers to exhibit to the masters and the counsel all the books and vouchers mentioned.)

*Cross-examined.*

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TUESDAY, 16 *April*, 1861.

The amounts of the expenses are furnished me by the manager of the road. At the end of the month the bills are sent in, made into a schedule, and handed to me to enter. The bills are handed into the superintendant (or manager's) office by those persons of whom they are purchased. They had to be supervised by the proper officer, examined by the manager, Mr. Goodrich, to see if they were correct, made into a schedule, and entered on my books to the debit of "operating expenses," and credited to the parties of whom purchased. The first that I saw or knew about them was that certain papers or
325 documents were handed to me as bookkeeper; if they were found to be correct, they were entered on the books; I merely had the entering of them on the books, and had no other supervision of them; I act only as bookkeeper; the papers are certified before I enter them; I do not enter papers hap hazard. As near as I can remember they were handed in to the manager's office; I don't know whose duty it was to collect them and keep them together; the bills were directed to be sent to the manager of the road monthly, I believe.

I got at the receipts from the cashier's statements, of which these are specimens. These are the statements for October, 1857. He gave me what we called duplicate receipts for the money received by him. I entered them in the books as I got them. Dwight W. Keyes was then cashier. Persons to whom credit was given on our books for their bills were not always paid the same month. The conductors brought in packages of money received on the road, which I know went into the hands of the cashier. I can't personally state how much money so went into his hands. I had access to the general freight ledger, (although I did not keep it,) and by that ledger it appeared that the agents made correct returns. That ledger was compared with their returns, and was a check upon them. The person who kept that ledger compared the entries on it with the cashier's returns. I do not know of my own knowledge whether the entries in the freight ledger were correct. It was not my business to compare that ledger with the returns. I sometimes did it; sometimes the freight agent did it alone.

The item of disbursements for October, 1857, embraces supplies and other items shown by the vouchers. Those vouchers are in the building here. I do not remember the amounts. I get the amount from pages 160 and 164 of ledger A. That book does not show the items embraced in that sum, but only the gross amount of expenses for each month. The journal shows the amount of each account and of each item. These entries in the journal were generally entered in the ledger once a month in one item. The journal is paged. The page of the journal on which is the entry of the expenses for October, 1857, is 24. It is in my handwriting. One item is some $14,000 charged to Mr. Goodrich, manager, for which he is credited when the disbursements are made. This entry was made by me as given to me. It is the pay-roll item. I can't say by whom this item was given to me, but I presume by Mr. Goodrich's authority. I did not, of my own knowledge, know how much Mr. Goodrich paid. That was no part of my business.

On page 140 of the ledger is the item of disbursements for November, 1857, and the items are on pages 46, 47, and 48 of the journal. I don't remember of handling any of the money myself so disbursed.

I only know that I received these statements of expenses paid,
326 and I entered them in the books. These payments were generally made on the manager's warrant drawn on the cashier. That was the rule, and I presume all were so made. The bills were presented, a schedule was made of them under the direction of the manager, and then they were entered by me to the debit of the operating account or construction account, and to the credit of the several persons presenting them. Then, on demand of such persons, warrants were drawn by the manager (usually about the 10th of each month) on the cashier for the balances to the credit of such persons, and the amounts were paid to them on such warrants by the cashier. When those warrants were drawn, the amounts were charged to the persons to whom the warrants were issued.

The expenses for December, 1857, were entered on ledger A, page 140, charged to income account. The credits to individuals and debit to operating account are on pages 76, 77, and 79 of the journal. I have no other knowledge as to the correctness of these items than of the similar items in the preceeding months.

The expenses for January, 1858, are debited to income account, on page 140 of ledger A, and on pages 106 and 107 of the journal. My knowledge as to these disbursements is the same as in the other cases.

My knowledge as to disbursements for February, 1858, is the same. They are stated on page 140 of the ledger, and on pages 132 and 133 of the journal.

The expenses for March are on pages 157, 158, and 159 of the journal.

The expenses for April, 1858, are on ledger p. 140, and on pages 186, 187, and 188 of the journal.

The expenses for May, 1858, are on page 140 of the ledger, and on pages 215, 216, and 217 of the journal.

On page 141 of the ledger are the expenses for June, 1858, and on pages 245, 246, and 247 of the journal.

The expenses for July, 1858, are on page 141 of the ledger, and on the journal, pages 272, 273, and 274.

The expenses for August, 1858, are on page 141 of the ledger, and on pages 300, 301, and 302, and 304 of the journal.

The expenses for September, 1858, are entered on page 141 of the ledger, and on pages 328, 329, and 330 of the journal.

The expenses for October, 1858, are entered on page 141 of the ledger, and on pages 351, 352, 353, and 357 of the journal.

The expenses for the following named months are entered in the ledger and journal on different pages, as follows:

| 1858. | Ledger page. | Journal pages. |
|---|---|---|
| November..... | 141 ..... | 382, 383, 384, and 387. |
| December ..... | 141 ..... | 411, 412, 413, 414. |
| **1859.** | **Ledger B.** | **Journal.** |
| January ..... | 100 ..... | 440, 441, 442, and 443. |

| 1859. | Ledger B. | Journal No. 2. |
|---|---|---|
| February | 100 | 19, 20, 21, and 24. |
| March | 100 | 46, 47, 48, and 51. |
| April | 100 | 72, 73, 74, 75, and 76. |
| May | 100 | 99, 100, 101, and 104. |
| June | 100 | 128, 129, and 130. |
| 327 July | 100 | 148, 149, 151. |
| August | 100 | 169, 170, and 171. |
| September | 100 | 187, 188, 189, and 193. |
| October | 101 | 210, 211, 212, and 217 and 218. |
| November | 101 | 231, 232, 237, and 238, 239, and 242. |

The account of the receipts was kept by me in the same books. They are found in the same ledger, on the opposite side—the credit side—of the ledger, on the pages above mentioned. When Mr. Chamberlain came in I opened a new set of books.

*Re-examined.*

There is on the books to the credit of L. B. Boomer, of the date of August 18th, 1860, to the debit of "operating account," an item "For his account of building drawbridge across the canal of the Fox and Wisconsin River Improvement Co., $3,275 85," which I have charged to the "income account" and credited to the "operating account," by order of Mr. Goodrich, the manager. In taking off this statement submitted by me from the books, I went over the income account on the books only as far as December, 1859, and consequently omitted this item. It is entered on page 102 of the ledger, and on page 405 of the journal. I cannot state why this item was not sooner charged to the income account. There was no entry of this item at all on the books before that time, (Aug. 18th, 1860.)

*By the masters.*

I made the entries to the debit of the individuals who received the warrants upon the evidence of the stubs of the warrant book, showing such warrants to have been issued. I made the entries every few days from the warrant book.

*Re-examined.*

I suppose the cashier has the paid warrants. When the month's business was closed up the amount of the pay-rolls were credited to him. The pay-rolls were generally receipted. Sometimes men were discharged in the middle of a month, when they would receive their pay.

E. C. JENNINGS.

Sworn to and subscribed this 16th day of April, A. D. 1861, before me.

WINFIELD SMITH, *Master, &c.*

*Deposition of D. W. Keyes.*

THURSDAY, 18*th April*, 1861.

Dwight W. Keyes, produced and sworn as a witness on behalf of the defendant Selah Chamberlain, says:

From the first of October, 1857, to the first of December, 1859, I was cashier for Selah Chamberlain in the office of the La Crosse and Milwaukee railroad. I received and disbursed all the money received from that railroad. I can give a statement of all the receipts and expenditures on the road in that period. I have compared the
328 statement produced by Mr. Jennings, here marked Exhibit No. 1, with the books and know it to be correct. I received all the money, furnished the bookkeeper with a statement of the amounts received and disbursed, and my account of receipts and disbursements corresponds to this statement. I can state that I received all the money and paid it all out, and I know that this is a correct statement of the amounts.

(Witness reads the entry on the books of the date of 18th August, 1860, as to bridge building by L. B. Boomer, on journal, p. 405, referred to in the deposition of Edgar C. Jennings.)

The bridge referred to in this entry was built by Mr. Boomer, and the money was paid to him and charged to his account. By some neglect the account was never charged to operating expenses until August 18th, 1860. The entry on the book of the payment to him is Feburary 29th, 1860, but it was paid before that time. There was some other work done by him, and the entry of the payment was delayed for a final settlement. I paid the money for Selah Chamberlain. The contract for the work was made while Mr. Chamberlain was in possession. When Mr. Chamberlain first took possession of the road, Mr. Goodrich thought it best to open a construction account, for the purpose of keeping separate the disbursements for constructing the road, for building depots, ballasting, &c. These matters did not embrace any part of the construction of the road included in the contract between the company and Mr. Chamberlain. Afterwards, these matters were all entered in the "operating expenses" account, and the "construction account," so called, was closed. These were all operating expenses, but are of the class called extraordinary expenditures. I received the monies direct from all the station agents on the road, and from all the local agents here, from the agents on the Mississippi river, from other railroads, and from the Post Office Department. I made returns to the general ticket agent and the general freight agent of the monies returned to me, and it was their business to examine the accounts and see if the accounts of the different agents balanced. I had nothing to do with those accounts, and knew nothing about the state of them. I only knew what money I received and paid out. All the monies passed through my hands; occasionally a little account would come in receipted as so much cash from some agent who had been obliged to contract the debt, but ordinarily the disbursements were all made by me directly. The bookkeeper has the various vouchers making the items of the expenditures made while

Mr. Chamberlain was in possession They were handed to him (Mr. E. C. Jennings, chief bookkeeper,) by Mr. Goodrich, to enter up and file away.

(The counsel for Selah Chamberlain, defendant, offers in evidence the record of a judgment rendered in his favor in the district court of the United States for the district of Wisconsin against the La Crosse and Milwaukee Railroad Company, on the second day of Oc-
329 tober, 1857, for $629,089 72 damages, besides costs, $15 50.)

The counsel for the other defendants appearing, objects to the admission of the record as evidence of indebtedness to the defendant, Chamberlain.

The record is admitted for the purposes for which it may be legal evidence.)

(The defendant Chamberlain's counsel offers and produces in evidence a certain draft, dated September 4th, 1857, of which the paper hereto attached, marked Exhibit No. 2, is a copy.)

This draft was charged to Mr. Chamberlain on the books of the railroad company prior to September 26th, 1857, but it was never paid, because it was ascertained that the company had no funds in the drawee's hands to meet it. It was included in the settlement made 26th September, 1857, as so much money paid to him. The entry is on page 41 of the journal and 28 of the ledger, "Western division."

The next item of Mr. Chamberlain's general account is for getting engines and iron over the Wisconsin river, $3,119 43. The company wanted to commence laying track on the other side of the river before the bridge was completed. I saw the men at work there, and I paid this amount for that work. This amount was not made up at the time of Mr. Chamberlain's settlement with the company in September 26th, 1857, and for that reason was not included in that settlement, although the work was done before. E W. Woodward was chief engineer of the road at that time.

(Defendant Chamberlain's counsel offers in evidence and produces the original bill of work and disbursements certified by the chief engineer, of which a copy, marked Exhibit No. 3, is hereto attached. Admitted in evidence.)

The certificate is in the handwriting of Mr. Woodward.

I have been on other works besides the La Crosse railroad. It is always customary to allow a commission for superintendence and the use of tools. That commission varies from 25 to 50 per cent. on the expenditures. It is paid to the party doing the work, furnishing the tools and men. I have never known it to be less than 25 per cent. I can myself give no estimate of the value of the work. They had many men and tools, some twenty horses, ropes and blocks, and other implements there. They made a road down to the river—or rather they widened it—and one up from the river, on the other side. There were 12 team drivers there. I know that one engine and some iron and ties were taken over the river.

The next item in the general account of Mr. Chamberlain is for completing the road to New Lisbon, $56,500. At the time of the settlement, when the judgment notice was given to Mr. Chamberlain, Mr. Woodward, the chief engineer of the company, made an estimate,

which was recorded in the company's estimate book, (now in my hands,) of work as if done between Portage City and La Crosse, amounting to $1,076,450, from which was deducted for com-
330 pleting the road to New Lisbon the amount which he estimated for that purpose, amounting to $56,500, that amount of work being necessary to complete it. The work necessary to complete the road to New Lisbon has since been done by Mr. S. Chamberlain.

The next item is for gravelling the road between Beaver Dam and Milwaukee, between September, 1858, and January 1st, 1859. I paid the men engaged in this work, and know that they were engaged in doing it.

(Mr. Chamberlain's counsel offers in evidence a contract dated September 26th, 1857, executed by Mr. Chamberlain, and by the La Crosse and Milwaukee Railroad Company, under a seal of the company, a copy of which is hereto attached, marked Exhibit No. 4.) The contract is under seal of the company. Admitted.)

(Estimate also offered and received in evidence, of which a copy, marked Exhibit No. 5, is hereto attached.)

Mr. Staughton was at the time this work was done, and at the time this estimate was certified by him, the engineer in charge of the work, and this certificate (or estimate) was signed by him in my presence, at the date of it, I think.

The next item in the general account is the bill for repairing gravel cars. I have that bill. That was $318 77. That amount was paid by me, I think, for Mr. Chamberlain. I was made out by the foreman. This was for work done before the judgment, and not included in the settlement.

The next item in the account is for stone and cement for drawbridge at Portage City; the date is Nov., 1857; the am't charged is $1,098 81. That amount I paid L. B. Boomer for stone and cement for drawbridge across canal at Portage City. This bill is no part of the bill above spoken of, amounting $3,275 85. This bill is for mason work, and that was for superstructure. J. M. L. Staughton was chief engineer at that time. I have his certificate of the correctness of this item.

(Bill offered with certificate of J. M. L. Staughton, chief engineer, and received in evidence, and a copy is hereunto attached, marked Exhibit No. 6.)

(The next item of Mr. Chamberlain's general account is $52,519 70, am't paid int. on 2d mortgage and Mil. city bonds and exch.) I did not pay this myself; the items are $1,000,000 of 2d mortgage bonds, bearing eight per cent. interest; semi-annual interest, $40,000. Interest on $314,000 Milwaukee city bonds, 7 per cent., $10,990. Exchange on $50,990, a 3 per cent., $1,529 70. I get the items from Mr. Chamberlain's private books. I know that $40,000 were deposited in the Ocean Bank, New York, March 1st, 1858, by Mr. Chamberlain, to pay interest on the 2d mortgage bonds; also $10,990 were deposited in same manner to pay interest on Milwaukee city bonds. Mr. Chamberlain received the coupons as paid from the Ocean Bank. I don't suppose they were all paid on that day, but the money was there. I hold these coupons for Mr. Chamberlain.

(Mr. Chamberlain tenders the coupons for examination by the masters.)

331 I was informed by Mr. Scott, the cashier of the Juneau Bank, that 3 per cent. was the current rate of exchange on that day.

(The next item is dated May 1, 1858, interest paid on 1st mortgage bonds and exch. $38,475.)

Mr. Chamberlain deposited in Ocean Bank, New York, May 1, 1858, to pay semi-annual interest upon $950,000, 1st mortgage bonds, the sum of $38,000; the exchange on that sum, at 1¼ per cent., amounted to $475; that was the current rate of exchange that day, and which was the sum I paid for exchange at the Juneau Bank; Mr. Chamberlain received from the Ocean Bank the coupons paid, and I hold them for Mr. Chamberlain now.

(Mr. Chamberlain here offers the coupons for inspection of the masters.)

(The next item is dated Sept. 1, 1858, interest paid on 2d mortgage and city of Milwaukee bonds, and advertising and exchange, $51,554 92.)

The amount was deposited in the Ocean Bank by Mr. Chamberlain September 1, 1858, to pay interest on $1,000,000 2d mortgage bonds, $40,000; also to pay interest on $314,000 city of Milwaukee bonds, $10,990 00; also paid advertising payment of above in four papers, $54 48; also exchange on $51,044 48, 1 per cent., $510 44.

Mr. Chamberlain received these coupons paid from the Ocean Bank, and I hold them for him. (The coupons are here offered for inspection.)

(The next item of Mr. Chamberlain's account is dated Nov. 1, 1858, and is interest on 1st mortgage bonds, $38,000, sinking fund on same $12,000; exchange and advertising, $522 06.)

The amount was deposited in the Ocean Bank by Mr. Chamberlain, Nov. 1, 1858, to pay interest on $950,000 of 1st mortgage bonds, $ 8,000 00; also to pay United States Trust Company, in New York, at same date, for sinking fund, $12,000; also paid for advertisement, pay't of interest, $21 85; also paid for exchange on $50,021 85, 1 per cent., $500 21.

The coupons for the interest paid were sent to Mr. Chamberlain by the Ocean Bank, and I hold them for him. (Coupons tendered for inspection.)

Mr. Chamberlain's counsel here offer receipt signed by John A. Stewart, as secretary United States Trust Company, dated Nov. 1, 1858, for $12,000, paid on sinking fund.

(The next item is March 1, 1859, interest paid on 2d mortgage bonds on Milwaukee city bonds, and exchange and advertising, $57,777 52.)

The amount was deposited as before, by Mr. Chamberlain, March 1, 1859, to pay interest on $1,000,000 of 2d mortgage bonds, $40,000; also to pay interest on $314,000, Milwaukee city bonds, $10,990; also to pay advertising, $22 40; the exchange on $51,012 40, 1½ per cent., was $765 12.

It was either the current rate at the time, or we bought it at that rate. The paid coupons for the above have been returned by the Ocean Bank to Mr. Chamberlain, and are now in my charge. (Cou-

pons tendered for inspection, also vouchers for the advertising.)

332 The next item is May 1, 1859, interest paid on 1st mortgage bonds, and exchange and advertising, $38,587 85.

The amount was deposited by Mr. Chamberlain with the Ocean Bank, May 1, 1859, to pay interest on 1st mortgage bonds, $950,000, $38,000; also to pay advertising, $17 60; the exchange on $38,017 60, at 1½ per cent., $570 25. This was the current rate of exchange at that time. The paid coupons for this interest, and vouchers for advertising paid, have been returned to Mr. Chamberlain by the Ocean Bank, and are in my charge. (Coupons and vouchers for advertising tendered.)

The next item in Mr. Chamberlain's general account is for getting cars and engine over Dividing Ridge, paid July, 1859, $53 00.

I don't know about this item.

The next item is for chairs and spikes, July, 1859, $1,116 30; I made out the account from the bills of the different men who certify that they received and used the material; I know that Mr. Chamberlain had chairs and spikes, and that they were taken by these men on the road. I only know that these men got these chairs and spikes from their statements. The men whose statements I use were in the employ of the road as road masters.

The next item is for building road beyond depot at La Crosse, $2,556 75; I know that road has been built from La Crosse Station building toward the town; I paid the pay-rolls just as they are charged, without any addition for profit; I paid it for Mr. Chamberlain; the amount so paid by me is $2,656 75.

The next item of the account is amount of cost of La Crosse Station buildings, December, 1858, $12,190.

I paid all of the money included in the above item to Mr. W. R. Sill; he made the disbursements at La Crosse; I understand that the pay-rolls for this item are in United States district court, with all the vouchers connected with it; I knew that the buildings were built, and that I paid the money for them to Mr. Sill.

The next item is for advances for right of way, amounting to $10,190 19.

| | |
|---|---|
| September 22, 1858, I paid to Wm. E. Smith, right of way agent | $4,200 00 |
| Same date, to John P. McGregor, acting as right of way agent | 300 00 |
| Same date, I paid to N. P. Stanton, for right of way purposes | 825 00 |
| November 16, 1858, I paid Wm E Smith | 240 00 |
| December 31, 1858, I paid to Wm. E. Smith | 250 00 |
| Same day, I paid him | 135 00 |
| Same day, I paid him | 300 00 |
| Same day, I paid him | 40 00 |
| Same day, I paid him | 250 00 |
| Same day, I paid John P. McGregor | 35 00 |
| January 19, 1859, I paid John P. McGregor | 375 00 |
| January 10, 1859, I paid John P. McGregor | 204 00 |
| July 1, 1859, I paid H. Palmer for right of way | 184 84 |

| | | |
|---|---|---|
| 333 | Same day, I paid J. G. Inbusch, interest on mortgage | 122 40 |
| | Same day, I paid J. G. Messinger, right of way | 115 00 |
| | July 10, 1859, I paid J. K. Van Horn, right of way | 120 00 |
| | Same day, I paid S. B. Emery, right of way | 164 85 |
| | Same day, I paid P. M. Johnson for getting right of way | 159 02 |
| | Same day, I paid J. E. Arnold, att'y in right of way | 175 00 |
| | July 21, 1859, I paid Brown & Ogden, int. on mortgage to Rosenthal | 218 25 |
| | July 21, 1859, I paid N. J. Emmons, att'y in right of way case | 25 00 |
| | Same day, I paid J. R. Warner, for right of way | 51 00 |
| | Same day, I paid Benjamin Baden, for right of way | 76 25 |
| | Same day, I paid J. E. Arnold att'y fees, right of way case | 150 00 |
| | Same day, I paid J. S. Patten, right of way | 50 00 |
| | Same day, I paid Harvey Birchard's mortgage | 61 60 |
| | Same day, I paid Lydia Caufield, right of way | 100 00 |
| | Nov'r 8, 1859, I paid A. C. May, int. on mortgage | 294 44 |
| | Same day, I paid recording deeds, | 7 42 |
| | " " " Geo. Abert, for street com's certificates | 226 57 |
| | " " " John Lunnd, int. on mortgage | 36 10 |
| | " " " J. G. Inbusch, same | 121 80 |
| | " " " J. F. Luck, int. on mortgage | 204 00 |
| | " " " costs in Vanderpoel, Thayer & Co, case | 17 50 |
| | " " " costs in Hoover case | 37 15 |
| | " " " advertising in N. Y. Tribune | 18 00 |
| | " " " J. McL. Staughton, for engineering | 300 00 |
| | | $10,190 19 |

The amounts above stated paid to Stanton, W. E. Smith, and McGregor, were paid by me under direction of the board of directors of La C. & M. R. R. by resolution. Those gentlemen were in the board, and were directed to settle claims for right of way. The deeds were taken in the name of the company, and not in the name of Mr. Chamberlain.

(Vouchers of Smith, McGregor, and Stanton, directors, for amount paid by them for right of way, and the deeds taken for right of way, settled by Mr. Chamberlain, are offered to be produced by Mr. Chamberlain.)

The sums above entered as paid on same day were not all paid same day, but entered on same day.

FRIDAY, *April* 19, 1861.

*Examination of D. W. Keyes, continued*

The next item in the general ac. of Mr. Chamberlain is, paid Morrill & Bowers for 5 passenger cars, $11,115 45.

Those cars were bought by Mr. Chamberlain, for the use of the road, and all run on the road, running.

May 25, 1859, Mr. Chamberlain paid $975, and gave two notes at 4 and 6 months, for $1,462 50 each, which have since been paid, and which amount was the price of two of said cars. July 5, 1859, Mr. Chamberlain paid cash $1,815 45, and gave two notes, 4 and 6 months, for $2,700 each; which notes have since been paid by Mr. Chamberlain, which last amounts were the price of three of said cars.

(Vouchers for these payments tendered.)

The cars so bought are Nos. 14, 15, 16, 17, and 18, passenger cars, La C. & M. R. R The cars were put on the road before the settlement above stated.

(The next item is, paid J. A. Hoover, on mortgage, (in fact, on contract for conveyance,) $3,236 52. I gave a check for the amount of this item, and the money was paid February, 1859. There was a contract for a deed for conveyance of some of the lots now comprising depot grounds in Milwaukee, and Mr. Hoover obtained an injunction against the railroad company, and to settle it Mr. Chamberlain paid Mr. Hoover the money, and took from Hoover a deed in his own name, in trust for the railroad company. The vouchers for this item were placed on file in this suit in the district court. The lots are now used by the railroad company, several tracks cross it.

In Dec. 1, 1859, Mr. Chamberlain gave up possession of the receipts and disbursements of the road to F. A Palmer and Prentis Dow, agents for trustees, on behalf of 2nd mortgage bondholders. At that time there were balances due foreign railroad companies, employees, and for supplies which were paid by Mr. Dow as agent, amounting to $75,113 23. These had been all entered up to the debit of the operating account, and included in the items of expenses stated in Exhibit No. 1. After Messrs. Palmer and Dow came in possession of the receipts, the collected of the receipts which were created prior to Dec. 1, 1859, and which also are charged in Exhibit No. 1, the amount of $27,302 10. Mr. Chamberlain also paid to Palmer and Dow, cash, $11,460. He also paid a note to New England Car Spring Company, on account of purchase of 18 box cars for use of the road, $3,080 26. He also paid State taxes for the years 1858, $4,924 54. The aggregate of which payments by Chamberlain, and receipts by Dow and Palmer, amounted to $46,766 90, which sum, deducted from $75,113 23, paid by Dow, leaves a balance of $28,346 33, chargeable to Mr. Chamberlain. The entries in reference to this matter are found on Mr. Dow's books, from which I took the ac. I made the entries. The next item of Mr. Chamberlain's general account is loss on steamer Keokuk, $11,000. The steamer was bought for $24,000 by Mr. Chamberlain, for the benefit of the road of the Rapids Packet Co. I can't tell how long she ran, but should say about two months, when she lay by one season, and then was sold for $13,000. At the time the business of this road was done by the Galena Packet Company, but as they did not treat the road fairly, it was found necessary to put on an independent line of boats to protect the interests of the road. This steamer was bought, and two other steamers were put into the line to run from La Crosse to St. Paul, in connection with this road. I think that the purchase of this boat was indis-
335 pensable, and I think has been of great benefit to the road, though I can't tell the amount. It enabled the road better to

compete with other lines, and make better terms with other lines, and has, in fact, resulted in the creation of an independent line from La Crosse to St. Paul. The benefit to the road, in my opinion, far exceeds the amount of the loss on the boat. In my opinion, the loss on the boat would have been more than made up in one month.

The manner of keeping the accounts of the road while in the hands of Mr. Chamberlain was this: The general freight agent has an accountant, and weekly reports are made, and there is a general balance account at the end of each month, showing what has been shipped to or from every station on the road. The general freight agent is the officer to whom all these returns are made, so that he has a perfect check on every station, and by his books he will know whether all the money has been collected and returns made to the cashier, from the fact that all amounts received from freight are credited to freight income. The general ticket agent keeps all accounts with different agencies; a statement of the amounts received from each agency by the cashier is furnished monthly to the general ticket agent to be credited to the proper agency, and each agency is charged with the tickets received.

*Cross-examined.*

I think that in my testimony in chief I fully stated the reasons of my knowledge of the correctness of Exhibit No. 1. I paid Boomer the amount of money stated; I know it was paid, and I know that the bridge was built. At the time the work of moving engine and cars across the Wisconsin river was done the road was not in possession of Mr. Chamberlain. The bridge was not completed as soon as it should have been, and the directors were anxious to have the track laid on the other side, and they directed Mr. Chamberlain to go on and get the cars and engine across the river. His tools and teams were used; I think I saw the letter telling Mr. Chamberlain to go on.

DWIGHT W. KEYES.

*Examination of Dwight W. Keyes continued.*

MONDAY, 22 *April*, 1861, 2½ P. M.

Dwight W. Keyes being further cross examined, says:

Question. What is the first item of the account on the books?
(Objected to. Admitted.)
Answer.

| | | | | |
|---|---|---|---|---|
| 1857, | Oct. | 13. Paid L. Everingham for back charges.... | 1,000 | |
| | Oct. | 14.....do..... | 500 | |
| | | 15.....do..... | 1,000 | |
| | | 19.....do..... | 500 | |
| | | 20.....do..... | 1,000 | |
| | | 21.....do..... | 500 | |
| | | 22.....do..... | 500 | |
| 336 | | 24.....do..... | 1,000 | |
| | | 27.....do..... | 1,000 | |
| | | 29.....do..... | 1,000 | |
| | | 31.....do..... | 1,000 | |
| | | 31. Sundry bills..... | 127 | 32 |

TUESDAY, 23 *April*, 1861.

The foregoing amounts are back charges paid by the road to other roads or transportation companies for their charges on freight received from them for shipment over this road, which amounts are subsequently refunded to this road, but neither amount is included in the statement marked Exhibit 1.

I have the vouchers for the disbursements incurred in getting the engine and iron over the Wisconsin river. One of these vouchers is missing, (being $27 21 for lumber, &c.,) but I paid the money myself. There is one charge among these for use of team, $49. That team was Mr. Chamberlain's, and no money was paid out to others on that item, and there is no voucher for it. In constructing the road Mr. Chamberlain never took receipts on the pay-roll from laborers for their work. I paid the men engaged in this work. The amount of the labor done by the men I know from the returns of the foreman.

I know what made up the amount of Mr. Chamberlain's judgment against the railroad company. The men who did the work in repairing gravel cars were in the employ of Chamberlain. Of the item for repairing those cars, $69 62, was paid out for castings put upon them.

In regard to the amount paid L. B. Boomer for stone, &c., for canal bridge, Portage City, $1,089 81, that sum was paid him in account.

Question. Have you the voucher for that payment?

(Objected to by Mr. Chamberlain's counsel, because the voucher is inadmissable, and not evidence—the objection being that Mr. Chamberlain is not under obligation to produce his private vouchers.) (Admitted.)

Answer. I have a receipt for monies paid him on settlement of account, including this item. I have his receipt for $23,410 10.

The road was built beyond the La Crosse depot under and by direction of the engineer of the road. It was no part of the work done under the contract for the construction of the road. I have these vouchers here.

(Witness produces them.)

This charge is merely for money paid out for labor. The materials were furnished by the company. No profit or commission was charged by Chamberlain. The vouchers are pay-rolls which make up the amount.

WEDNESDAY, 24 *April*, 1861.

Dwight W. Keyes, being further cross-examined, says;

I have here the schedules of the vouchers for the expenses for October, 1857.

The items in Lansing Bonnell's bill were bought for the use
337 of the machine shop and car shop.

DWIGHT W. KEYES.

*Deposition of Daniel L. Wells.*

Daniel L. Wells, being duly sworn, says:

I made the charge for team work, horses, &c., in getting the engine and cars over the dividing ridge. The charge was correct, and the work was done. They were taken over the ridge before the tunnel was completed because the company wanted to run the road beyond the ridge, and the tunnel was not completed. These bills show the items of the charge. I know this bill of $76 58 is correct, as well as the bill of $53. The bill of $76 58 was incurred in January, February, and March, 1858.

Of this bill of $1,116 30 I paid a portion myself. Mr. Chamberlain & Co. furnished the chairs and spike mentioned in the bill for repairs to the road, after it was completed to La Crosse. I was the partner of Mr. Chamberlain in the firm of S. Chamberlain & Co. The other items of the bill (besides chairs and spike) are cash paid by me for S. Chamberlain. The chairs and spike were furnished and charged to S. Chamberlain by the firm, and he furnished them for the road. We had the chairs and spike on the line of the road left over after the completion of it, and the men on the road used them in repairs; sometimes I knew of their taking them—sometimes they told me of it.

I had charge of the work of getting the engine and cars over the Wisconsin river. That was done just before Mr. Chamberlain took the lease. There was no agreement that I know of between Mr. Chamberlain and the company what price should be paid for the work. These disbursements were all necessary in doing this work.

I know the fact that a deduction was made for incompleted work this side of New Lisbon, sufficient, as estimated, to complete the road to that place, at the time of the settlement between Mr. Chamberlain and the company at the date of the rendition of his judgment. That work has been done since the judgment was rendered.

THURSDAY, 25 *April*, 1861.

Daniel L. Wells, being further examined, says:

I know that Chamberlain's men repaired gravel cars of the La Crosse Railroad Company, and that they sent in a bill for it, and that this is the amount of the bill.

I know that Mr. Chamberlain paid Mr. Boomer the amount of the item in his account for stone and cement for the mason work of the drawbridge at Portage City. I made the arrangement with Mr. Boomer for it.

The work on the extension of the road beyond the La Crosse depot was done in the fall of 1858. It was between an eighth and a quarter of a mile double track. I superintended the work, and I know that the account rendered for it is correct, and represents the actual
338 disbursement of Mr. Chamberlain for labor only in building the work, the company furnishing the materials. The amount is $2,656 75. It was built in the water in great part. The road

could not have been operated without this extension. It was used as a side track partly for switching cars. The road was completed in the fall of 1858, and this work was done immediately afterwards.

I know the station buildings at La Crosse were built under the charge of Mr. Sill. They were necessary for the operation of the road.

DANIEL L. WELLS.

*Deposition of R. D. Jennings.*

Royal D. Jennings, being duly sworn as a witness for the defendant Selah Chamberlain, says:

I am general freight agent for the La Crosse railroad. I have been acting in that capacity from a date previous to October, 1857, and have been employed on the road since the 4th July, 1855. I was general freight agent all the time that Mr. Chamberlain was in possession of the road, and now hold that position under the receiver. Mr. Keyes paid the accounts, and I paid the pay-rolls all or part of the time that Mr. Chamberlain was in possession of the road. He paid the pay-rolls what time I did not pay them. He was cashier of the road during that time and paymaster of the accounts. He is now pay, and A. G. Miller is cashier. Mr. E. C. Jennings kept the general books of the road while Mr. Chamberlain had possession of the road, and has done so since then, and did so before. John M. Kimball was general ticket agent most of the time that Mr. Chamberlain was in possession, and has so acted ever since then. Edwin H. Goodrich was manager of the road while Mr. Chamberlain was in possession, and has so acted ever since then. I think the same system of keeping the general accounts of the road prevails now that prevailed while and before Mr. Chamberlain was in possession of the road.

I can tell the amount of income from the freight business of the road from October 1st, 1857, to December 1st, 1859. The amount for each month is the same stated for each month in this statement marked Exhibit No. 1, now shown to me. I have not footed up the sums, and do not know the gross amount.

While Mr. Chamberlain was in possession the duty of making monthly reports devolved upon me. I made my reports from the books. Those relating to the freight business only were kept under my immediate supervision. The amounts of the passenger receipts stated in this statement (Exhibit No. 1) is the same as the amounts reported by Mr. Kimball every day to Mr. Keyes, during the same period, as shown on Mr. Keyes' books. From my familiarity with the general business of the road, I believe the figures of this statement (Exhibit 1) to be correct. I did not compare this statement as to the passenger receipts with Mr. Keyes' books, but I know it
339 was compared. I got this statement, not from his books, but from the general books kept by Mr. E. C. Jennings. The freight accounts only are compared in my office with Mr. Keyes' books.

R. D. JENNINGS.

*Deposition of John M. Kimball.*

John M. Kimball, being produced as a witness for the defendant Selah Chamberlain, and duly sworn, says:

I have charge of the ticket department of the La Crosse and Milwaukee railroad, under the receiver, and have had that position since the first of January, 1857. I held it all the time that Mr. Chamberlain was in possession. My business is to furnish the different stations with the tickets used on the road, charging them to the local agents. Those agents on the line of the road report to me every week their sales, and are instructed by me to remit, and they do remit, to the cashier of the road. At the end of each month the cashier furnishes me a statement of the amount received by him from each agent, and I give to the agents credit on my books for those sums. I also check the receipts of tickets collected on the train, to see if they correspond with the report of tickets reported sold by the agents. These agents also report to me the tickets on hand every thirty days, and thus any variations are discovered. I therefore know what amount of money is received by the cashier on the sale of tickets. Every month I can tell the state of the accounts on sale of tickets. I can say that the amount received by the cashier, as reported by him to me, have always been found correct.

Mr. E. C. Jennings also hands me the statements of the money collected by the conductor on each train as it comes in.

Through tickets are also sold by our road to points on other roads, and our tickets are also sold by other roads, and I keep the accounts with the other roads, and I furnish every thirty days statements of the balance of those accounts to the chief clerk, Mr. E. C. Jennings.

J. M. KIMBALL.

*Deposition of W. R. Sill.*

FRIDAY, 26 *April*, 1861.

William R. Sill, being further examined as a witness for the defendant Selah Chamberlain, says:

I saw this paper executed. (Lease from Thomas Spence and Benjamin W. Reynolds to Selah Chamberlain, dated 29 July, 1858, recorded in the office of the register of deeds of La Crosse county, Wisconsin, 29 July, 1858, in vol. 17, p. 24, of which a copy is filed in this court, in *in* the above entitled cause, in which Greene C. Bronson, Shepard Knapp, and James T. Soutter, are complainants.) I know the signatures of the parties. This paper (copy from the files endorsed, "filed Feb. 6, 1861") is a copy of this original lease. The grounds were leased for depot uses for the La Crosse road, as
340 stated in the lease. Depot buildings were erected on the grounds described in the lease. There were other buildings besides those put on this particular tract of land. All were built by Selah Chamberlain, for the purposes of the road. The receiver of the company is now in possession of this piece of the land, and of all the buildings I have mentioned, and they are now used and occupied for

the purposes of the road, and have been so used and occupied since the road was opened. The buildings and the turntable, which were erected by Mr. Chamberlain, were built under my superintendence and cost, in the summer and fall of 1858, and were then worth $12,190 95. I built them as cheap as they could be built, I am satisfied. I generally took vouchers for my disbursements in building those buildings. Some very small disbursements I returned in a voucher of my own. I returned the vouchers to Dwight W. Keyes, (vouchers shown to witness, attached to the deposition of Dwight W. Keyes, filed in this court, in the above entitled cause, wherein Bronson, Soutter, and Knapp are complainants, February 2, 1861.)

These are the vouchers for the disbursements in the erection of those buildings, and the schedule attached to them is correct.

I am very positive that at the time the lease was made a deed of the premises described in the lease was made by the lessors to the La Crosse & Milwaukee Railroad Company, which deed was made and recorded after the lease was recorded, so as to give the lease priority. What I did in receiving the deed was at the request of Moses Kneeland, one of the directors, and of P. M. Johnson, the right of way agent of the company.

These amounts mentioned in the schedule were actually expended by Mr. Chamberlain. They include a charge of $300 for my services in superintending the construction of the building. There is now commission or profit charged.

I reside in La Crosse, 200 miles from this city of Milwaukee. I have come here four times to attend this examination before the masters, attending as a witness for Mr. Chamberlain, one day at each trip.

W. R. SILL.

(The counsel for the defendant Selah Chamberlain reads in evidence a deed from Jacob A. Hoover and wife to Selah Chamberlain, dated 18 February, A. D. 1859, and recorded in the office of the register of deeds of Milwaukee county, Wisconsin, on the same day, in vol. 64 of deeds, on pages 307 and 308, a copy whereof is filed in this court in the above entitled cause, in which Greene C. Bronson and James T. Soutter are complainants.

Also the contract and notes executed by the La Crosse & Milwaukee Railroad Company, dated 7 June, 1858, of which copies are hereto annexed, marked Exhibit No. 7.)

*D. W. Keyes recalled.*

Dwight W. Keyes, recalled as a witness for the defendant, Selah Chamberlain, testifies:

341 These papers are the vouchers to which I referred in my former examination. I paid the money, as I have stated, on receiving these papers for Mr. Chamberlain. I supposed these vouchers were filed in this court, as they were taken from me for that purpose.

DWIGHT W. KEYES.

*Deposition of A. G. Miller, jr.*

Andrew G. Miller, jr., being produced as a witness for the defendant, Selah Chamberlain, and duly sworn, says:

I am cashier of the La Crosse & Milwaukee railroad, and have acted in that capacity since last June. I have familiarized myself with the manner in which the books are kept in the different departments of the business of the road. As far as I have had occasion to see the books, the system of keeping the accounts now is essentially the same as practiced from 1 October, 1857, to 1 December, 1859. I have followed the same system nearly as that in use before I came. Each agent along the road sends to the cashier packages of money, with a sheet stating how much is on freight and how much on passenger business, for which money the cashier returns to him a receipt, and enters the amounts on the debit side of his cash book. The agent also returns weekly to the freight and ticket departments, separately, statements of the amounts of money he has transmitted to the cashier, and the cashier returns to the freight and ticket departments a copy of these entries on the cash book, so that any discrepancy between the amount of money received by the cashier and the amounts so returned by the agent would at once appear on the general books of the freight or ticket office. All payments, except on the pay-rolls, are made by the cashier, and for those the cashier pays the money to the paymaster, and he returns paid pay-rolls to the same amount. All vouchers, after being approved by the manager or receiver, are entered upon the general books to the credit of the parties, and are paid by the cashier on warrants ordered by the manager, which warrants are entered upon the general books to the debit of the parties, so that an overpayment or an underpayment would be at once discovered. The books in this manner at once show the amount of the receipts, of the operating expenses, and of the net revenue of the road. If there is any mistake anywhere, the books will not balance. I know of no way in which any money could be earned by the road without its appearing on the books. I do not know how money could be misappropriated by any agent of the road, (except way moneys collected by the conductors of trains,) or by the superintendent or lessee of the road, without immediate discovery. I know of no possible way in which Mr. Chamberlain, when in possession of the road, could have misappropriated money earned by the road unless it appeared on the books of the company in the proper department.

342 The Post Office Department is charged on the general books each month with the amount due from it to the company, according to the contract. Every quarter the Post Office Department sends an order to the manager of the road to collect from the different post offices along the road any monies they may have on hand, and a return of the monies so collected is made to the department, when a draft is sent from the department for the balance, and these two amounts, taken up by the cashier and returned to the general bookkeeper, must balance the amount first charged by him to the Post Office Department.

So the amount due from the express company is debited to it on the general books, and the amount paid to the cashier by it is credited to that company.

The receipts from telegraphing are reported by the operators, who are generally station agents.

A. G. MILLER, JR.

*Deposition of E. H. Goodrich.*

SATURDAY, 27 *April*, 1861.

Edwin H. Goodrich, produced as a witness for the defendant Selah Chamberlain, and being duly sworn, says:

I am manager or superintendant of the La Crosse & Milwaukee railroad, and I have been in that position since October, 1856. I am familiar with the system of accounts kept on the road, and with its business and income. The books show correctly the earnings of the road from all sources from October 1st, 1857, to December 1st, 1859, and the disbursements during the same period. I have examined the general accounts during that period. Each department is a check upon the other. They all check up together. There were no discrepancies during that period except a few errors, which were discovered and corrected.

All bills are certified by some proper agent of the road, who knows of the purchases and the necessity and correctness of the same.

The road is now, and was while Mr. Chamberlain was in possession, economically operated. I do not think there were any useless or extravagant expenditures. We always bought for cash, and got advantageous terms. We bought mostly of manufacturers and commission agents. I know, from my former mercantile experience and otherwise, that we buy on favorable terms; on better terms, I think, than the merchants buy.

We employ about 200 men on the line of the road, engaged in track repairs, since the completion of the road. At the time that the contractors on the Northwestern road paid 90 cents to $1 per day we hired men at 70 to 75 cents. We furnished them steady employment, which is the reason, I suppose, why we got them cheaper. We paid laborers and other employees the same rates of wages when Mr. Cham-
343 berlain was in possession that we now pay, with the exception of some to whom we pay now more than we paid then on account of their increased experience and skill. Mr. Chamberlain, when in possession, enforced on me continually, and was constantly seeking opportunities to exercise the duty of reducing the expenses to the lowest possible rate, and I and he continually acted on that policy.

The depot buildings at La Crosse were erected because they were indispensably necessary to the business of the road. The road could not be operated without them. The road was built into the water, that boats might come up to it, and the depot was built on piles there.

I know of Mr. Chamberlain's doing some ballasting on the road between here and Beaver Dam. I know that the ballasting was done under the order of the chief engineer of the company, made a short time before the work was done. I have seen that order. It was made

out by Mr. Woodward, the chief engineer, and handed to me. I do not know where it is.

I know of the purchase of the steamboat Keokuk, on the Mississippi river, made September 1st, 1859. Mr. Chamberlain purchased her at Keokuk. We purchased that boat and another one, the Black Hawk, for the purpose of establishing a daily line between La Crosse and St. Paul, in order to protect ourselves against the Minnesota Packet Company, which was taking the business that should have come over the La Crosse road to other points below La Crosse. That company refused to bring freight to us, preferring to carry it to Prairie du Chien or Dunleith. They would not make connections with us, keeping back purposely their boats. Their object was to get the increased price for carrying passengers and freight below La Crosse. Individual members of that company said they would break down the La Crosse road.

Mr. Chamberlain bought only an undivided half of the two boats, the owner of the other interest consenting to put the boats into a daily line from La Crosse to St. Paul. Afterwards the other owner became dissatisfied with the line, and there was a division, Mr. Chamberlain taking the Keokuk, which cost $24,000, the price which Mr. Chamberlain originally paid for the half interest in the two boats. The two boats ran about 15 days, and the Keokuk ran until the close of navigation that season. The Black Hawk was given to the other joint owner, on account of being of too heavy draft, and a line was then made up with Mr. Davidson, who put in two boats which, with the Keokuk, made a daily line until the close of navigation. The Keokuk was not run in the season of 1860, and was sold in the spring of 1861 for $13,000, leaving a loss to Mr. Chamberlain of $11,000. The revenues of the road were increased by the running of the Keokuk, because we could not, without the purchase, secure a daily line to St. Paul, although we made repeated efforts to do so. The revenues were at once favorably affected by getting the daily line.

344 The increase of the net revenues of the road caused by the establishment of the daily line, of which the Keokuk was the basis, was, in my judgment, more than three times the sustained on the boat. Not only was this daily line established, but the other company was also forced to run its boats to La Crosse, thereby increasing our business by the competition between the two lines. The road kept up its rates, getting full rates on all the increased business. The road contributed nothing to the support of the boats. The profits and losses on running the boats were received and borne by the owners. The road had nothing to do with them. The balance sheet of this boat showed a nominal profit of about $1,000, but there were outside expenses and claims against her which the clerk making it knew nothing of, and the boat really made nothing. Mr. Chamberlain paid for the boat himself, and operated her at his own expense. The object of buying her and putting her on was to enable the road to earn money. It was not expected that the boat would earn money, and she did not earn anything. I think Mr. Keyes kept her accounts, and can state all the facts about them. Before buying the boat, Mr. Chamberlain consulted with myself and members of the board of di-

rectors, and we all approved of the plan. It was universally understood that the purchase was necessary. I thought it was necessary for the road, and think so still. The next year (1860) we (the receiver, Mr. Crocker, being in possession after June 9th) again commenced doing business with the Minnesota Packet Company, and continued until July or August. The company made the same efforts to prevent business from coming over our road as in the previous season. For instance, in order to prevent passengers from making connections with our road, the boats of that company would often, within a mile or more of La Crosse, tie up to the bank or otherwise delay and wait until after our trains had gone. In every way they endeavored to prevent passengers from stopping at La Crosse. In order to get any business from the boats, we were compelled to wait until long after our regular time, and then to run our trains at very great speed and corresponding expense, in order to make our connections east. These things were done both seasons. The receiver became satisfied of the necessity of an independent line, and an opportunity offering to create one, he embraced it. Then a competition commenced between that line (Davidson's) and the regular line, (Minnesota Packet Company,) and a reduction of rates followed. The necessity of the line was so apparent to all parties interested that the receiver persisted in the contest, although rates of fare were reduced to one dollar from St. Paul to Chicago, and rates on freight were reduced one-half. The Chicago roads took their proportion of those rates. We did the same thing. We also contributed to support the boats by giving them a larger share of freight earnings, so as to enable them to continue the competition. The lake shore road from here to Chicago, and
345 the Chicago and Northwestern road, joined us in carrying out this system, and the land grant bondholders and the second mortgage bondholders of this road approved of it. The loss to the Minnesota Packet Company was so severe that the rates were restored before the end of the season, and they agreed to give us an independent line this season, which they have done. That is the object which we contended for, and had in view when the Keokuk was purchased, and the result, I think, would not have been attained by this time but for the purchase of the Keokuk. We had an agent (Capt. Cotton) travelling to all the various points on the Ohio and Mississippi rivers for some two or three months during the dull season of 1859, trying to get a daily line established between La Crosse and St. Paul, but we could not succeed without purchasing the boats or an interest in them. We could not buy a boat suitable for our purpose cheaper than the Keokuk, at the time she was purchased, and when we had done with her, she could not be sold for more than the price obtained for her. Mr. Chamberlain made frequent attempts to sell her, and was finally obliged to leave it to arbitrators to determine her price when she was sold. She was bought by the Minnesota Packet Company, her price being fixed by the arbitrator, who was a competent, disinterested steamboatman chosen by Mr. Chamberlain and the company. I myself tried to sell her for Mr. Chamberlain, and never had an offer of over $10,000. I do not know her value.

EDWIN H. GOODRICH.

*Deposition of Selah Chamberlain.*

MONDAY, 29 *April*, 1861.

Selah Chamberlain, one of the defendants, being produced, sworn, and examined, says:

Question. Does the income account now shown to you, and marked Exhibit No. 1, as explained by the testimony of the witness, Dwight W. Keyes, show a truthful statement of the income and expenses of the La Crosse & Milwaukee railroad while you were in possession, from the first of October, 1857, to the first of December, 1859, so far as you know or have reason to believe; and will you state your means of knowledge on the subject?

Answer. It does. I attended to the business while the road was in my possession, and often examined the accounts, vouchers, and books, and I believe that they were all kept correctly, and this paper shows the result from the books. There was no income from the road of any kind which did not go upon the books. The sums stated as disbursements were faithfully and truly disbursed in the manner shown by the accounts, so far as I know. I kept close watch over the whole business, giving my whole attention to it, being determined to save something out of it if possible. The system of keeping the accounts was about the same then as now, and I think there are no
346 undiscovered errors. I that I received no more from the road than is charged to me on the books.

At the time the estimate was made, about the first of October, 1857, I claimed and believed that the work done by me had been largely underestimated. I also believe that the re-estimate made by Sill and Woodward is on some items too low. The reason for that is that I was on the work all the time, had made it my business to attend to the work, had the profiles, and knew approximately the amounts of work done. In the last estimate the one item of grubbing and clearing was estimated too low by several thousand dollars.

The $5,000 draft, heretofore testified to by Keyes, was charged to me in account, never credited to me, and was never paid, because the company notified me it had no funds in the drawee's hands, and requested me not to present it, and I did not. No part of it has been paid.

I know the work of getting the engines and cars of the Wisconsin river was done by me, at the urgent request of the La Crosse & Milwaukee Railroad Company. They agreed to pay me the cash disbursed and twenty-five per cent. for furnishing men and tools, for superintendence, commission, and profit. Mr. Daniel S. Wells was our general manager on the road, and he superintended this work for me. The bills were usually brought in at the end of the month, and when brought in, if correct, they were certified by the engineer and handed to me to bring here for settlement with the company. I believe the amount of the charge to be correct. It was not included in our settlement, made at the time of the judgment, as I think the work was then going on. No part of it has ever been paid. The company was in a great hurry then to get their road in running order.

The railroad was completed by me from Portage to New Lisbon, and therefore the item of $56,500 for completing it, estimated by the chief engineer at the time of the judgment, is due to me. No part of it has ever been paid. The gravelling between Milwaukee and Beaver Dam was done under a contract between the company and myself, dated the 26th of September, 1857. The exact number of yards I do not know, except from the estimate of the chief engineer. I believe it to be correct, and no part of it has been paid.

The chief engineer was in the employ of the La Crosse & Milwaukee Railroad Company, and was never in my employ, nor did he receive at any time from me any compensation or remuneration. Mr. Staughton received from me $200 or $300 at the end of his term, after the road was completed to La Crosse, which the company then owed him, and I paid him at their request, (they having no money then,) and charged the company. He had no interest in the contracts, or any of them, and had no pecuniary connection with me or my business.

I know we repaired the gravel cars, and that the bills came in, and I was never paid for the work. I believe the bills to be correct.

347 My instructions were to make out no bills but what were correct. The work was done under an arrangement between the company and myself, that I should repair them, and he paid the disbursements, and 25 per cent. on the amount The gravel cars were at the gravel pits, some 35 miles from Milwaukee, at Whitman's Island, (so called,) and they could not be brought in here without great trouble and expense, and without delaying our men. The repairs were made, more or less, during the whole time that the cars were in use there. We erected a shop there for the purpose. We had thirty regular dump gravel cars, and some platform cars besides. Mr. Boomer had some stone on hand after completing the Kilbourn city bridge, and he had stonecutters there who had been at work on the bridge. We bought the stone of him, hired him to cut it, and, according to the books, so much money was paid him for it. I did not in person pay it, but I allowed the amount, $1,089 81 as paid, receiving the voucher for that sum, and I have no doubt it was paid. I never got any part of it back. I make no charge for commission or profit on it. I know that the money was paid out of my funds (derived from the receipts of the La Crosse and Milwaukee railroad) for interest, sinking fund, exchange, and advertising, as stated in Mr. Keyes's testimony, (which I heard.) I have never had any payment except by charging it in the account.

I was present part of the time when the work was done of getting cars and engine over the dividing ridge. We laid a track over the hill, and had blocks, tackle, ropes, and tools, and we hauled a passenger engine and cars over, so that the company might use them the other side of the tunnel for carrying passengers before the tunnel was completed. It cost the amount charged, ($53,) and there was no profit to me on the work.

The charge of $76 58 for lumber for water tank was paid for the company out of my money, and I never got any of it back. That is all I know personally in regard to it.

We had chairs and spike left after completing the road, which were used by the repair men in repairing the road The instructions were, that the foreman of the repair gang should take them as he needed them, and make returns of the amount; and the amount returned was $1,116 30, for which I never got my pay. There was no profit to me on them. The different men who used them took them.

My contract for completing the road to La Crosse (from Tomah) included the road to the river at La Crosse. The depot was afterwards located at the point, and in order to work the road the track had to be extended south, along the river, between an eighth and a quarter of a mile, for which I charged only the actual amount paid out.

348 That track is now in use, and is indispensable to the operation of the road at that point.

I paid out for the depot buildings at La Crosse, $12,190 95, charging no profit or commission.

I know of Mr. Keyes paying out most of the money charged as paid for right of way, being present frequently, and I myself negotiated the settlements in some cases

I purchased the cars from Morrell & Bowers, for which I have paid $11,115 45, and the cars are now in use on the road.

The amount of $3,236 52 was paid to Jacob A. Hoover for a balance of purchase money on a lot which the company had contracted to buy of him in Milwaukee, because he had obtained an injunction preventing the cars from running over the lot on account of the non-payment of the money.

So far as I know, the statement in Mr. Keyes testimony as to the amounts of money charged to me as receipts of the road before 1 December, 1859, and actually collected by Prentiss Dow, $27,302 10, is correct; also relating to the disbursements made by Mr. Dow, on ac. of operating expenses previous to December 1st, 1859, which had been credited to me, $75,113 23. I paid him, however, myself, $11,460 00, and I paid a note to the New England Car Spring Co. of $3,080 26, which Dow was to pay, and was credited for, and for which I was not credited. I also paid $4,924 54 State taxes, which is not credited to me, but is credited, I suppose, to Mr. Dow, as paid by him. These payments were all made during the month of December, 1859, and therefore they do not appear on the books kept by me while in possession, nor are they included in the statement, Exhibit No. 1. I have charged no percentage, commission, nor profits on the work done, or disbursements made by me for the road after I took possession, as lessee, under the mortgage or lease, on account of the provisions of that instrument, by which I was to have twelve per cent. interest on the amounts due me, and also $200,000 stipulated damages.

I deemed, and still believe, the purchase of the steamboat Keokuk of the greatest importance to the road, and the result has shown it. It was necessary in order to make the road worth anything for through business. Mr. Goodrich has explained the matter as fully as I could do. The boat only ran about two months, and did not make any money. She had to compete with the other boats, and to carry at reduced river rates. There is a matter yet unsettled connected with her earnings, and my impression is that there was a small

loss on the season's business. There were bills to pay not included in the clerks, statement, which, I think, overbalanced the apparent
349 profit. I was not in possession of the road next season, and the boat did not run. I made an arrangement to sell the boat that season, but the purchaser refused to carry it out, and she was not sold until the spring of 1861, I think in March, when I could get no more for he than $13,000. I paid $24,000 for her out of my own money, and could then get her for no less. I made the best bargain for her that I could. The only object I had in purchasing the boat was to protect the road and enable it to make money. I did not expect to make anything off the boat.

S. CHAMBERLAIN.

(The examination of Mr. Chamberlain was suspended at this point and further proceedings postponed at the request of Mr. Carpenter.)

MONDAY, 13 *May*, 1861.

The counsel for Selah Chamberlain, defendant, reads in evidence the lease or mortgage executed by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, dated 26th September, 1857, under which Mr. Chamberlain took possession of the railroad, a copy of which is on file in each of the abave entitled causes, marked Schedule A. Also the contract, of which a copy is filed in each of said causes, marked Schedule B, and of which a copy is also hereto attached, marked Exhibit No. 4, dated also 26 September, 1857. Also a contract between the said railroad company and Selah Chamberlain, dated 8 December, 1857, of which there is on file in each of said causes a copy, marked Schedule C. Also a report to said railroad company, signed by William R. Sill and E. W. Woodward, dated March 25th, 1858, a copy of which is filed in these causes, marked Schedule D, (in suit of Newcomb Cleveland *vs.* Selah Chamberlain, impleaded, &c. marked C) Also the assignment of the judgment of Newcomb Cleveland *vs.* The La Crosse and Milwaukee Railroad Company, executed by Newcomb Cleveland to James B. Cross in trust for Selah Chamberlain, dated ———, of which a copy is on file in these causes, marked Schedule E. Also deed from Jacob A. Hoover and wife to Selah Chamberlain, dated 18 February, 1859, recorded in the office of the register of deeds of Milwaukee county, Wisconsin, on that day, in volume 64 of deeds, pages 307 and 308, a copy whereof is on file in these causes, marked F.

(The counsel for the defendant Chamberlain, now proposes to offer proof of the consideration of the judgment recovered by him against the La Crosse and Milwaukee Railroad Company, heretofore mentioned, entered in this court October 2d, 1857, in obedience to the order of the court; protesting, however, that the said judgment is sufficient evidence of the indebtedness of said railroad company to said Chamberlain, and also that there is no party before the court in these causes entitled and in a situation to attack or impeach the said judgment.)

350 The counsel for the defendant, Selah Chamberlain, accordingly offers, under protest, as above, and reads in evidence a contract between the said railroad company and said Chamberlain, dated 20

November, 1856, a copy whereof is hereto attached, marked Exhibit No. 8. Also a contract between the same parties, dated 20 January, 1857, of which a copy is hereto attached, marked Exhibit No 9.

The counsel for the defendant Selah Chamberlain, further reads in evidence, under and pursuant to the stipulation hereto attached, under protest as aforesaid, the depositions of witnesses taken in a cause formerly pending in this court, in which Newcomb Cleveland is complainant and the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain and others, are defendants, which cause has been appealed to and is now pending in the Supreme Court of the United States, to wit: The deposition of Charles S. Gregg, also of Thomas Daniel, also of Don J. Whittemore, also of Isaac C. Brewer, also John McLean Staughton, also of William R. Sill, also of Moses Kneeland, also of Ezekiel W. Woodward, together with the exhibits thereto annexed, marked, respectively, A, C, D, E, F.

A printed copy of which depositions and exhibits, with sundry corrections in writing of references and typographical errors, is herewith returned and filed, marked Exhibit No. 29.

The counsel for Fleming and others, judgment creditors, objected to the said depositions and each of them only as being immaterial.

*Selah Chamberlain recalled.*

WEDNESDAY, 15 *May*, 1861.

Selah Chamberlain, recalled and further examined on his own behalf, answers and says:

The amount estimated by Mr. Woodward as due to me on the first of October, 1857, was $1,076,450. I claimed that the estimate was too small.

A judgment was entered in my favor against the La Crosse and Milwaukee Railroad Company in this court, on or about the 2nd day of October, 1857, on a note given to me by that company on the first day of October, 1857, for $629,089 72. The amount of that note was arrived at in this way: My account, herewith produced, (marked Exhibit No. 10, and hereto attached,) was settled by the company on the first of October, 1857, and the note given to me for the amounts of the two balances shown. The balance of $110,366 72 was due me on work done on the eastern division, and the other balance of $518,723 was on work done on the western division. I claimed that more was due to me than was allowed to me in this settlement by the company. The work had been done under two contracts, one for the eastern and one for the western division.

351 Approximate estimates had been made monthly by the engineers of the company in charge of the work. I, as a matter of course, could not know whether those estimates were accurate or not. On them I received payment in money and in promissory notes of the company, as appears in this account, marked Exhibit No. 10, on the failure of the company in the last of September, 1857. I returned to them the unpaid notes, for which they gave me credit according to this account, and they gave me a note, as I have stated, for the whole amount at that time found to be due. In this account there is an item

of $4,768 65 debited to me, which had been entered on the company's books to the debit of Chamberlain & Alden by mistake, as the work was done by me, and the amount paid should have been charged to me. It was really one item of work, which was wrongly credited to them after their account had been settled, thus showing a balance to that amount in Chamberlain & Alden's favor on the company's books. This account, so settled, was just and true in every particular, both as to the credits and debits, to the best of my knowledge and belief, except that I had done more work than the company gave me credit for, and should have been allowed therefor in the settlement. This was the amount due me for work done, materials furnished, and money paid, exclusive of any claim for damages on account of suspension of the work.

In the month of February, 1857, (February 25th,) I applied to the railroad company for one hundred and fifty thousand dollars of the land grant bonds, with privileged stock at eighty per cent. on the par value of the bonds, which were to be deducted from the amount of my final estimate on the completion of the road to La Crosse. On this application the company delivered to me in bonds and stock one hundred and nine thousand and some odd dollars. This amount, on my entering into a new contract for completing the road from Tomah to La Crosse, about 1 January, 1858, was returned to the company to balance the account. It was agreed in that new contract that I should return this amount to the company, and I accordingly did so.

In reference to the amount of $200,000 allowed me by the company (as per Exhibit No. 4) for the suspension of the work on the road, the work was suspended by order of the company on or about the twenty-third day of September, 1857, and was never resumed under either of the contracts then in force. I claimed at that time that by the terms of the contract the company was bound to pay me the balance then due to me, and to give me, before suspending the work, the thirty days' notice specified in the contract. They admitted that they ought to do so, but they alleged that they could not pay me the balance due me nor any part of it. We had a good deal of
352 discussion about the matter. I claimed a much larger sum than $200,000 for the suspension of the work, and for the failure then to pay cash. I had a large force of men and horses, tools, machinery, and other materials then on the line for completing the road. I also had sub-contractors at work on various parts of the line, with whom I had to settle, and whom I had to pay in full the retained percentage, being the full amount for work done and materials furnished, settling with them the best way I could. In some cases I had to buy their materials, tools, horses, carts, shanties. The first work done by them, and that which they had then done, was the easiest part of the work, but I had to pay them full price for it. So that I should have had to pay much more to another contractor to finish the work than they were by their contracts bound to do it for. When I entered into new contracts for the completion of the road from the junction (Tomah) to La Crosse, the board of directors claimed that inasmuch as I had received an allowance of $200,000 for the suspension of the work on the contract of 20 January, 1857, that I

ought to take the new contract at a price much below the former contract price, which I did. I took the work more than $300,000 less than I would have been entitled to for the same work under the contract of 20 January, 1857. The indebtedness of the company to me, which I agreed to take out of the earnings of the road, was then all due to me, and the failure to pay it damaged me more than $200,000. If it had been then paid promptly, I should have saved more than the $200,000. I devoted my time to running the road under the lease or mortgage from October 1st, 1857, to about June 9th, 1860. Mr. Dow took the receipts and made all disbursements (as agent for the trustees in the mortgage) after December 1st, 1859, but I remained in possession of and running the road, for which I was allowed no compensation, and have been paid nothing. I have charged nothing for those services in addition to the amount of $200,000 stipulated damages. I commenced work again on the road, but under a new contract, in the month of March, 1858.

At the time the damages were allowed to me, I agreed to take $200,000 of the second mortgage bonds of the company, at fifty cents on the dollar. Two hundred of the bonds, making the amount, were sent to me from New York here to apply on those damages, and were charged to me on the company's books as $100,000 cash. These are the same bonds referred to in my answers filed in these causes. I have been trying ever since I received them to sell them for fifty cents on a dollar, but have never been able to do it.

S. CHAMBERLAIN.

*D. W. Keyes recalled.*

THURSDAY, 16 *May*, 1861.

Dwight W. Keyes, being recalled at his own request, says:

353 In my testimony in regard to the expenses and receipts of the steamboat Keokuk I made an error which I wish to correct. I overlooked an account of her expenses, which I now hold, amounting to $2,104 00. I had had this bill before as a separate account, but forgot it. This is the bill. None of the items were ever charged by Mr. Chamberlain to the company or credited by the company to him. The items are all for expenses incurred in running and keeping the boat after she was purchased by Mr. Chamberlain and before she was sold.

Nothing was realized out of the earnings of the boat. Tickets were issued by the road to the amount of $127 70, which were returned to the general ticket agent, which had been included in the boat's accounts as so much profit, but from which nothing was, of course, ever realized. A barge was bought out of the boat's funds for her use, costing $450, which was included in the sale of the steamboat by Mr. Chamberlain. Twenty-seven $\frac{6}{100}$ dollars was returned to me in cash by the clerk of the boat, of which $25 was paid to the pilot on the Des Moines rapids for pilotage, leaving $2 06, the balance that came into Mr. Chamberlain's possession, which was the entire net receipts of the boat, so that there was a loss on the boat of the amount of this bill, $2,104 less $2 06, being $2,101 94, besides the $11,000 lost on the sale of the boat, as I have before stated.

of $4,768 65 debited to me, which had been entered on the company's books to the debit of Chamberlain & Alden by mistake, as the work was done by me, and the amount paid should have been charged to me. It was really one item of work, which was wrongly credited to them after their account had been settled, thus showing a balance to that amount in Chamberlain & Alden's favor on the company's books. This account, so settled, was just and true in every particular, both as to the credits and debits, to the best of my knowledge and belief, except that I had done more work than the company gave me credit for, and should have been allowed therefor in the settlement. This was the amount due me for work done, materials furnished, and money paid, exclusive of any claim for damages on account of suspension of the work.

In the month of February, 1857, (February 25th,) I applied to the railroad company for one hundred and fifty thousand dollars of the land grant bonds, with privileged stock at eighty per cent. on the par value of the bonds, which were to be deducted from the amount of my final estimate on the completion of the road to La Crosse. On this application the company delivered to me in bonds and stock one hundred and nine thousand and some odd dollars. This amount, on my entering into a new contract for completing the road from Tomah to La Crosse, about 1 January, 1858, was returned to the company to balance the account. It was agreed in that new contract that I should return this amount to the company, and I accordingly did so.

In reference to the amount of $200,000 allowed me by the company (as per Exhibit No. 4) for the suspension of the work on the road, the work was suspended by order of the company on or about the twenty-third day of September, 1857, and was never resumed under either of the contracts then in force. I claimed at that time that by the terms of the contract the company was bound to pay me the balance then due to me, and to give me, before suspending the work, the thirty days' notice specified in the contract. They admitted that they ought to do so, but they alleged that they could not pay me the balance due me nor any part of it. We had a good deal of
352 discussion about the matter. I claimed a much larger sum than $200,000 for the suspension of the work, and for the failure then to pay cash. I had a large force of men and horses, tools, machinery, and other materials then on the line for completing the road. I also had sub-contractors at work on various parts of the line, with whom I had to settle, and whom I had to pay in full the retained percentage, being the full amount for work done and materials furnished, settling with them the best way I could. In some cases I had to buy their materials, tools, horses, carts, shanties. The first work done by them, and that which they had then done, was the easiest part of the work, but I had to pay them full price for it. So that I should have had to pay much more to another contractor to finish the work than they were by their contracts bound to do it for. When I entered into new contracts for the completion of the road from the junction (Tomah) to La Crosse, the board of directors claimed that inasmuch as I had received an allowance of $200,000 for the suspension of the work on the contract of 20 January, 1857, that I

ought to take the new contract at a price much below the former contract price, which I did. I took the work more than $300,000 less than I would have been entitled to for the same work under the contract of 20 January, 1857. The indebtedness of the company to me, which I agreed to take out of the earnings of the road, was then all due to me, and the failure to pay it damaged me more than $200,000. If it had been then paid promptly, I should have saved more than the $200,000. I devoted my time to running the road under the lease or mortgage from October 1st, 1857, to about June 9th, 1860. Mr. Dow took the receipts and made all disbursements (as agent for the trustees in the mortgage) after December 1st, 1859, but I remained in possession of and running the road, for which I was allowed no compensation, and have been paid nothing. I have charged nothing for those services in addition to the amount of $200,000 stipulated damages. I commenced work again on the road, but under a new contract, in the month of March, 1858.

At the time the damages were allowed to me, I agreed to take $200,000 of the second mortgage bonds of the company, at fifty cents on the dollar. Two hundred of the bonds, making the amount, were sent to me from New York here to apply on those damages, and were charged to me on the company's books as $100,000 cash. These are the same bonds referred to in my answers filed in these causes. I have been trying ever since I received them to sell them for fifty cents on a dollar, but have never been able to do it.

S. CHAMBERLAIN.

*D. W. Keyes recalled.*

THURSDAY, 16 *May*, 1861.

Dwight W. Keyes, being recalled at his own request, says:

353 In my testimony in regard to the expenses and receipts of the steamboat Keokuk I made an error which I wish to correct. I overlooked an account of her expenses, which I now hold, amounting to $2,104 00. I had had this bill before as a separate account, but forgot it. This is the bill. None of the items were ever charged by Mr. Chamberlain to the company or credited by the company to him. The items are all for expenses incurred in running and keeping the boat after she was purchased by Mr. Chamberlain and before she was sold.

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(The bill mentioned by the witness, $2,104, is produced and exhibited to the masters, together with the vouchers for the items thereof.)

DWIGHT W. KEYES.

MONDAY, 20 *May*, 1861.

It is admitted by Messrs. Carpenter & Gridley, attornies for certain defendants as above stated, and by Messrs. Emmons, Van Dyke & Hamilton, attornies for Selah Chamberlain, defendant, that on the 13th day of August, 1860, an action was instituted in the county court of Milwaukee county by Mary L. Mosley, administratrix of the estate of Willis Mosley, deceased, against the said Selah Chamberlain, and that the cause of action set forth in the complaint was the death of said Willis Mosley on the 26th day of September, A. D. 1859, caused by the alleged negligence of certain servants and agents of the said Chamberlain, employed by him at that time in and about the running and operating said La Crosse & Milwaukee Railroad, there being no allegation that said Chamberlain was present on the occasion of such alleged negligence or was personally guilty of negligence; that said Chamberlain appeared by counsel (Messrs. Finches, Lynde & Miller) and defended said action; that afterwards a trial was had and a verdict rendered against said Chamberlain in said action, on which
354 judgment was rendered against him on the 21st day of December, A. D. 1860, for the sum of $4,549 34, damages and costs. From which judgment the said Chamberlain has appealed to the supreme court of the State of Wisconsin, having filed a proper bill of exceptions and procured a stay of proceedings by giving a proper undertaking for that purpose. And that such appeal is still pending.

The private books of Selah Chamberlain, defendant, are produced by him, and submitted to the inspection of the masters and the counsel.

*Chamberlain recalled.*

Selah Chamberlain, defendant, being recalled, says:

A suit has been brought against me in the United States district court for Wisconsin, by Eighme, for the infringement of Tanner's patent for car brakes (of which said Eighme claims to be owner) on the La Crosse & Milwaukee railroad, while I was running it under my lease or mortgage. The La Crosse & Milwaukee Railroad Company had bought the right to use the patent on that road, but Eighme claims that only the corporation had the right to use the patent; that I had no right to use it, and hence he claims damages of me for using the patent. The amount of the claim I do not remember, but it appears in the papers on file in the suit. His right to recover remains undetermined.

A suit has also been brought against me by Erwin McCall in the circuit court of Columbia county, Wisconsin, to recover damages for the killing of horses alleged to be injured on the La Crosse & Milwaukee railroad, while the same was in my possession under the lease or mortgage. That suit is still pending and undetermined.

One D. J. M. Loop has also brought a suit against me in the circuit court of Columbia county, for taking gravel for ballasting or repairing the road from ground claimed to be owned by him, which suit is still pending. I claim and believe that the railroad company directed my agents to take this gravel, asserting their right to do so. The work was done by a sub-contractor, and was estimated by the company's engineers, and it must have been cross-sectioned by them before any gravel was taken.

*Cross-examined.*

There was never any contract between me and the La Crosse & Milwaukee Railroad Company as to the purchase of the steamboat Keokuk. There was no such company that I know of, then acting or contracting. The earnings of the boat were not kept by me as receipts of that company, but entirely distinct from them. I bought the boat of the Rapids Packet Company for $24,000. I sold it to the Dunleith Packet Company for $13,000, as appraised by Capt. Ward, of St. Louis.

355 I am the equitable owner of the judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company on the 7th day of October, 1857.

TUESDAY, 21 *May*, 1861.

I have been the owner of that judgment since the second day of March, 1859, it having then been purchased by James B. Cross for me. The Hoover deed was made to me to secure me for the money paid by me.

The first contract I ever had with the La Crosse and Milwaukee R. R. Company is dated 20 November, 1856, for ballasting between Beaver Dam and Portage City. It was signed by Moses Kneeland, and negotiated by me with the board of directors.

Question. Was any officer, director, or agent of said company, or any other person or persons than yourself, directly or indirectly interested in, or did any such person ever directly or indirectly have or receive any benefit or advantage from the said contract of 20 November, 1856?

Answer. No officer of the railroad company had any interest, either directly or indirectly, in the contract; but Mr. Daniel L. Wells had a small interest in the contract by a private arrangement with me, and no other person had any.

The next contract I had with the company was dated 20 January, 1857.

Question. I repeat the same question with reference to the contract of 20 January, 1857, which I put in relation to the contract of 20 November, 1856.

Answer. The answer is the same as to the last question. There was an addition to the contract of 20 January, 1857, dated 30 April, 1857, changing the work at the Ridge from a through cut to a tunnel. These are all the contracts which I had with the company up to the second of October, 1857, and under these I did all the work for which

I now have claims against the company, except the extra work provided for in no contract. The ballasting on the western division was done by order of the company engineers without any written contract, and the work was included in the final estimate, which went into the judgment.

Question. Did any officer, director, or agent of said railroad company, or any person who had been such officer, director, or agent, ever in any manner, directly or indirectly, have any fee, reward, or compensation, present or gratuity, or in any way or manner profit by, or be benefited on account of, either of said contracts with the said company?

356 Answer. Not to my knowledge. I never paid them anything, and have no knowledge of their ever receiving any benefit.

Question. Have you any reason to believe that any such person received any such benefit?

Answer. I have not.

Question. Is there any contract, understanding, express or implied, declared or honorary, that any such person ever shall, at any time, or upon any event or contingency, have or receive any benefit or advantage out of, or on account of, the avails of said contracts?

Answer. There is not. I had a very large force employed in September, 1857—I suppose equal to 1,500 or 2,000 men. I can't state the amount I paid out in September. I did not get my pay, and did not therefore pay them all. I should think my expenses for the month of September would be between $80,000 and $100,000. The work was suspended, and never resumed under the same contract. The men employed in September, 1857, were discharged then, and were not paid for labor afterwards, except those who were retained to take care of the teams and other property on the line.

Question. Will you state, estimating as nearly as you can, the several items constituting what you claimed to be the damage suffered by you on the suspension of the work on the 23d of September, 1857?

Answer. The first great item is the stopping of the work without notice, and not paying me, so that I had to leave the men unpaid. Another item was the agreement on my part to finish the road to New Lisbon, which I made in part consideration of the $200,000. On the suspension of the work I had a large quantity of horses, carts, tools, shanties, implements and materials of all kinds for the completion of the road, which were thrown idle, and made comparatively worthless. The horses would eat their heads off in a little while. Another item was the profits I could have made had I gone on and completed the road under the contract of 20 January, 1857. I had to settle with the sub-contractors, and pay them full prices for all the work done; in many instances purchase their shanties, horses, and tools, when the work which they had done was the easiest and cheapest part of the work. I think we had as large a force employed in September as could be profitably employed on the road. The company was crowding us all the time to get the road done to Tomah, so that they could make a sale of their land grant bonds. Keeping the horses and teamsters to take care of them for thirty days would not cost over $7,500 of $8,000.

The engineer's estimate on the first of October, if it had been correct, would show what the company owed me after deducting from
357 the estimate the withheld percentage. My books show all the money which has been paid me from time to time by the La Crosse Railroad Company. The amounts are the same as stated in the account produced here, marked Exhibit No. 10.

The judgment was purchased of Cleveland, by James B. Cross, at the request of my counsel. The notes of James B. Cross, endorsed by Clark Shepardson, were given for the judgment; Cross held the judgment as security for himself and Shepardson, (together with other securities,) until the notes given to Mr. Cleveland should be paid by me, which I agreed to do; upon doing so, I was to have the judgment. I have made the payments for the judgment, so far as they have been made, and am under obligations to pay the remainder, the judgment still standing pledged for the unpaid balance. The consideration for the judgment I have paid, and am to pay with ten per cent. interest.

SELAH CHAMBERLAIN.

*Deposition of H. L. Palmer.*

Henry L. Palmer, being produced as a witness on the part of the defendant, Selah Chamberlain, and duly sworn, says:

I was a director of the La Crosse & Milwaukee Railroad Company, and attorney for the company in September, 1857, and became vice-president of the company on the first of October, 1857. I was aware that Mr. Chamberlain had a contract with that company, for the western division of the road, and also another for ballasting on the eastern division. I know that he did work on the road in 1857, under those two contracts; I know that the company had a settlement with him, at the time that a judgment was confessed to him, in the latter part of September and first of October, 1857.

Question. What do you know about that settlement, the manner in which it was arrived at, and how the balance due Mr. Chamberlain was ascertained? and generally state what you know of the merits of his claim as then ascertained.

Answer. In the first place, Mr. Chamberlain had been doing a very large amount of work, and arrearages from month to month had been accumulating on account of work performed under his control for the construction of the western division, and his contract for ballasting on the eastern division. When we got down to the month of September, there was a large amount found due to him, on his estimates, which had accumulated during several months preceding. He was pressing for payment. In order to secure the amount which the company was owing him, and also to provide for the completion of the road to New Lisbon, the lease of the 26th September, 1857, was executed.
358 The road was then nearly completed to New Lisbon. About the time that he took possession of the road under that lease, I think on the first day of October, it may have been on the morning of the second of October, he informed several of the directors of the company, and myself especially, as the vice-president, that he did not consider his lease a sufficient security for his debt, and he urged that the com-

pany should give him a judgment for the amount due to him. It was proposed to consider the subject of giving him a judgment at the meeting of the board to be held the evening following. In order to prepare for a proper consideration of the subject, after a good deal of conversation, I that morning went to the chief engineer, Mr. Woodward, and directed him to prepare, as soon as he could, a final estimate of all the work done by Mr. Chamberlain on the road. I am not certain that it was on the first of October that I called on him; it may have been as early as the twenty-sixth of September. Our object in getting this estimate was to ascertain the exact amount due to Mr. Chamberlain. I especially directed the chief engineer to be careful to have his estimate correct. Such an estimate as I directed to make—a final estimate—was made and returned to the office, and then a statement was prepared from the books, I think by Mr. Peabody, the bookkeeper, under the direction of Mr. Goodrich, purporting to exhibit the amount due from the company to Mr. Chamberlain at that time. These accounts or statements were presented to the board held in the evening, I think, of the first of October. A resolution was passed at the same meeting authorizing the president to execute a judgment note to Mr. Chamberlain for the amounts found to be due to him. As the accounts were first presented to the board that evening, they embraced an estimate including some work not then completed, I think, to the amount of something over $50,000. I objected to embracing that in the debt for which it was proposed to give him judgment; I urged upon the board that the company would be bound by their action as to the amount of the judgment, and that careful investigation should be had to ascertain the exact amount due to Mr. Chamberlain. The account was then corrected by striking out from it all that was embraced in it for unfinished work, to be thereafter performed, and a balance was found in favor of Mr. Chamberlain against the company for amount for which judgment was afterwards confessed, some $629,000. This balance was ascertained by taking the estimates of the gross amount of work performed, and deducting from that amount the amount of the payments made to Mr. Chamberlain on account of the work, as exhibited by the books of the company. The accounts or statements on which the board acted were, during that evening, compared with the accounts between Mr. Chamberlain and the company on its
359 books. This comparison was mainly made by Mr. Goodrich, in connection with one of the bookkeepers. Mr. Chamberlain being present part or all of the time, and some of the other directors taking part in it more or less. I, myself, went through with the statement of the payments to Mr. Chamberlain, comparing it with the account on the ledger of the company. The meeting at which this transpired commenced early in the evening, and was concluded, I think, about 2 o'clock that night, lasting several hours, most of which time was occupied in the manner I have mentioned, in endeavoring to arrive at the true amount due to Mr. Chamberlain. I had no personal knowledge of the amount of work he had performed, except that derived from the estimates returned to the office, and I don't think I had any personal knowledge of the amount of payments made to him, except such as was derived from the books of the company and

such vouchers as were there, and that I probably knew from time to time that payments were made to him. Up to that time I had had very little to do with the construction or financial department of the company. About the first of September, no final estimate having then been made, I was under impression that we were owing to Mr. Chamberlain between $300,000 and $400,000, and when the final estimate was made, and the balance struck, showing the amount of over $600,000 due to him, the amount surprised me; and there being so much more due to him than I had anticipated, I insisted on a particular investigation of the accounts, to see if in reality there was so much due to him. The amount having been arrived at, the resolution was passed, directing the note to be executed with a warrant of attorney annexed, on which judgment might be entered. The damages allowed on the contract for suspension of the work did not go into that settlement, nor into the judgment. Mr. Chamberlain was there all the evening, and Mr. Woodward was there part of the evening. I had to rely on the figures of the engineer for the correctness of the estimate. I had given him special directions to be very careful, and had his assurance that the estimate was reliable. I told him that it must be as accurate as possible, but that in any event, it must not include more work than was actually done, as I did not want the board to commit themselves, by confessing a judgment for any more than was actually due; if there should be any margin, I desired that it should be in favor of the company. I believed then, from all the information we had before us, that the amount for which that note was given was actually due from the company to Mr. Chamberlain. I thought then that it was possible that there might be slight errors in figures, but I could not dis-
360 cover any. I refused to the last to vote for that resolution, but it was not because I doubted the amount due, but because of the effect it would have upon the company. I have learned nothing since which would change my opinion that the amount allowed was all due, provided it was made upon the correct basis; that is, if the work was done, as specified in the estimate, and of the character described in the estimate, of that I had no knowledge, and cannot judge, not being an engineer. I know that a re-estimate was made, but I do not know the result of it.

I am satisfied, on reflection, that I directed Mr. Woodward to make this estimate several days before this meeting, (which was, I think, on the first of October,) as Mr. Woodward went out on the road in order to make some measurements for the estimate.

I know there was an allowance made to Mr. Chamberlain for damages, the ground of which was fairly expressed, I think, in the resolution allowing the account.

H. L. PALMER.

*D. W. Keyes recalled.*

SATURDAY, 1 *June*, 1861.

Dwight W. Keyes, recalled as a witness for defendant Selah Chamberlain, testifies:

In my former testimony (page 36 hereof) I stated that the unpaid

balances charged to the operating account, and which were not paid by Mr. Chamberlain, were $75,113 23. These I stated were paid by Mr. Dow, as agent. I also stated that Mr. Dow and Mr. Palmer collected of the receipts earned prior to 1 December, 1859, $27,302 10. I also stated that Mr. Chamberlain paid the State tax for the year 1858, amounting to $4.924 54, and some other payments, and that the balance chargeable to Mr. Chamberlain as the difference between the earnings of the road collected after 1 December, 1859, but made before that time, after deducting the payments made by Chamberlain on account of the unpaid balances of operating expenses, left chargeable to him the sum of $28,346 33.

I have some explanations and corrections to make as to these statements. At the time I made up these accounts, running since the 1 December, 1859, I had not access to the books of Mr. Dow, he being absent in New York. I made the account up from figures taken from those books before that time. I presume that other entries have been made since I took the figures. I wish to make my corrections from the balance sheet of the books of the road. That would show that the balance due from the road on the 1 December, 1859, which had been charged on those books to the account of "operating expenses," amounted to $78,450 36.

361 Then the amount of balance due to the road, which had been entered on those books as earnings, was $21,085 49. He had also paid some accounts which had not been charged on the books to the account of "operating expenses," to the amount of $563 75. (This last item with two items, one of $121 80, paid to John G. Inbusch, and one of $36 10 paid to John Swain, make up the item of $721 65 which appears on the debit side of the trial balance sheet taken from the books of the company on the 1 December, 1859.) There then was an account on the books of $4,900 07 in favor of S. Chamberlain & Co.; another account of $2,247 62 in favor of "S. Chamberlain, coal oc.;" another one of $1,965 56 in favor of Daniel L. Wells; also there had been in fact paid by Mr. Chamberlain on account of pay-rolls for the month of November, 1859, $2,238 29, which last item had not been entered on the books on the 1 December, 1859. These items of $4,900 07, $2,247 62, and $1,965 56, have been charged to those several accounts balancing them and credited to him. I know that these amounts were due from the road, being mostly for wood, ties, and coal furnished to the road. These sums, with the amount of $3,080 26 paid by S. Chamberlain to the New England Car Spring Company for cars, and $11,460 cash advanced to Mr. Dow, make up a total of $47,541 04, which should be deducted from the $78,450 36, leaving a balance chargeable to Chamberlain of $30,809 32.

The item of $4,924 54, State tax of 1858, I suppose was included in the amount of $75,113 23, to which I testified before, and therefore I supposed it should be credited to him; but I now see that it was not a part of that amount, and therefore it should not be credited to him.

I have now taken this account from the basis which should have been adopted in the first place.

I furnished Mr. Chamberlain with the data of his account previous to his testifying, which were erroneous in the particulars stated. He had no means of knowledge except from the books and from the account furnished by me.

*Cross-examined.*

I was cashier of Mr. Chamberlain while he held the road as lessee.

Question. Have you furnished in your testimony, or by any account or statement filed with the masters, a statement of the total amount received by Mr. Chamberlain from the earnings and income of the road while he operated it?

Answer. Exhibit No. 1 shows that amount, taken with the expla a-tions furnished in my testimony.

362 Question. Have you also furnished a statement of the amount of the expenditures paid by him for operating the road, and for other purposes connected with the maintaining of the real and personal property upon the road?

Answer. Exhibit No. 1, taken with my testimony, shows it all.

Question. Do you know whether or not the trustees of the second mortgage, in fact, paid the balance stated by you as unpaid for operating expenses on the first day of December, 1859?

Answer. I don't know whether they have paid them all. They have paid some. They have collected the whole amount that I have stated as balances due to the road on the first of December, 1859.

DWIGHT W. KEYES.

MONDAY, 2 *September*, 1861.

Dwight W. Keyes, being further examined, testifies and says: I paid John G. Inbush, December 18th, 1858, these four coupons now exhibited here, $240, together with interest and exchange thereon, amounting in all to $254 74. I paid the amount for Mr. Selah Chamberlain, out of his funds. They are coupons on a mortgage on depot property of the La Crosse and Milwaukee railroad, in Milwaukee. This sum is not included in any account heretofore testified to. The coupons are $60 each, due 1 January and 1 July, 1858, on bonds numbered A and B, given by the railroad company.

DWIGHT W. KEYES.

*E. H. Goodrich, recalled.*

TUESDAY, 24 *September*, 1861.

Edwin H. Goodrich being re-examined, says: (Being recalled at his own request.) Since I was formerly examined in this cause I accidentally discovered the profiles and field notes made by the engineers of the western division of the La Crosse railroad. This was some two weeks ago. They were found in a trunk used for keeping village and depot plats, in the draftsman's room adjoining my office. I had no idea of finding the profiles and field notes there, and therefore did not search there for them. I found them when looking for plats of depot grounds. I do not know how they came there. They are now accessible to the masters.

EDWIN H. GOODRICH.

Among the books exhibited and produced to us by the defendant Selah Chamberlain, were the estimate book, and the record of the proceedings of executive committee, both belonging to the La Crosse and Milwaukee Railroad Company. In the former of the said
363 books are certain estimates signed by E. W. Woodward, chief engineer, of which copies are hereto annexed, marked Exhibit No. 38. In the latter book are certain records, of which copies are hereto annexed, marked Exhibit No. 39.

The transcripts and exemplifications filed herewith, and marked, respectively, Exhibits Nos. 30, 31, 32, 33, 34, 35, 36, and 37, were submitted to and filed with us by Mr. Carpenter, on behalf of the several plaintiffs described in the said exhibits, defendants herein.

Upon the affidavit of A. Fleming, herewith returned and filed, endorsed, "Filed 1 October, 1861," Mr. Carpenter, of counsel as aforesaid, made an application to us on that date to hear testimony of the character indicated in the said affidavit, to which objection was made, and we denied the said application.

*Deposition of Daniel L. Wells.*

District court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON, and JAMES T. SOUTTER, trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et als.*

Deposition of Daniel L. Wells, taken before the masters, under the order of reference in this cause, of the 11th day of March, 1861, in behalf of Selah Chamberlain, defendant.

TUESDAY, 11 *June*, 1861.

Daniel L. Wells being duly sworn, says: I know the amount of solid rock excavation estimated by Mr. Woodward, in his final estimate, dated 1 October, 1857, as done by Mr. Chamberlain. The amount was 118,250 yards, according to that estimate. According to the Woodward & Sill estimate, the amount was 118,557 cubic yards. Mr. S. Chamberlain paid, on the estimate of the engineer, to Williams & Co., sub-contractors between Kilbourn City and Mauston, for excavation of 101,568 yards of rock. He also paid Garfield & Albee for 1,571 yards of rock excavation between the same points. S. Chamberlain took out a large amount of rock east of Kilbourn City, which work is charged with 700 kegs of blasting powder.

(The foregoing testimony is objected to by Mr. Carpenter, counsel for Sebre Howard, and other defendants, and is taken subject to objection for irrelevancy.)

*Cross-examined.*

I know of my own knowledge as to these payments being made by Mr. Chamberlain. At the time of settlement, he paid them about $4,000 in cash. Williams & Co. did much other work for Mr. Chamberlain, which was mixed with this in the final settlement.
364 He paid them fifty cents a cubic yard for 101,568 cubic yards

of rock excavation. Their whole account against him was over $90,000. I paid them most of the money on their monthly estimates made by the engineers of the company. On the final settlement, Mr. Chamberlain paip them $4,000 cash, and gave them his notes at 12, 18, and 24 months for the balance due them.

*Re-examined.*

The estimates on which they were from time to time paid were the same regular monthly estimates on which the amount done by Chamberlain was from time to time determined.

DAN'L L. WELLS.

SATURDAY, 31 *August*, 1861.

Daniel L. Wells, being further examined, testifies and says:

I have counted the coupons in Selah Chamberlain's possession, in Milwaukee, which are now produced here. The statement, which I now produce, shows the number of coupons on each mortgage paid by him, and the number not returned as paid by the Ocean Bank, where the interest was advertised to be paid, and where the money was deposited to meet them. The statement embraces, among those paid, only those now presented here to verify the same.

(Statement produced, marked Exhibit No. 28, and herewith returned.)

The following is a further explanation of the item of Chamberlain's account. "Damage for detention and change of line at New Lisbon, $1,121." The road had been located and some work done upon it by Mr. Chamberlain's sub-contractors, when the line of the road was changed by the chief engineer, and Mr. Chamberlain was ordered to stop, and some days elapsed before a definite location of the line was made. Mr. Chamberlain paid those sub-contractors $1,121 for the work they had done on the old line, and for the detention while the new one was located. The chief engineer fixed the amount himself.

The road was built west of Portage by Mr. Chamberlain, under the chief engineer's directions, at the sub-grade. I don't think there was a continuous mile on that division where there was ballasting found on the entire section. The ballasting done on the $45\frac{32}{100}$ miles on the division was done by train afterwards, under the directions and order of the chief engineer, and not under a written contract.

It was worth more to do the ballasting done by Mr. Chamberlain between Milwaukee and Beaver Dam than that west of Beaver Dam, because the latter was continuous, and the former was in separate patches, and there was more delay necessary; and there were also more detentions, because there were more trains running at this end of the road.

There were gravel cuts on the east 45 miles of the western division, where there was ballasting enough for the mile, but there was
365 not a continuous mile section of gravel or ballasting.

The coupons produced here are all cancelled by being punched.

DANIEL L. WELLES.

District court of the United States for the district of Wisconsin—In equity.

JAMES T. SOUTTER & GREEN C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

Examination of witnesses, taken in pursuance and by virtue of an order of reference in this cause of the eleventh day of March, A. D. 1861, on the part of the defendants Graham and Scott, Sebre Howard, and the Milwaukee & Minnesota Railroad Company.

SATURDAY, 15 *June*, 1861.

Present: The masters; Mr. Carpenter and Mr. Hubbell, of counsel for those defendants; Mr. Van Dyke, of counsel for the defendant Selah Chamberlain.

The defendants first above named, by Mr. Carpenter, their counsel, offer and read in evidence, under the stipulation filed and herewith returned, the deposition and evidence taken and used by the complainant Newcomb Cleveland in his suit against the La Crosse & Milwaukee Railroad Company, and others, in the district court of the United States for the district of Wisconsin, in equity, mentioned in the said stipulation, and they produce, according to said stipulation, a printed copy thereof, which is herewith returned, marked Exhibit No. 24, and also including a part of printed page 185, being the conclusion of the deposition of Lockwood L. Doty, immediately preceeding the deposition of C. S. Gregg, offered by the defendant Chamberlain, and herewith returned.

(The counsel for the defendant Selah Chamberlain objects to the admission of the foregoing depositions, on the ground of immateriality and irrelevancy therein. He also renews all the objections to the different portions of the said depositions which are contained in the body of said depositions.)

*S. Chamberlain recalled.*

Selah Chamberlain, being recalled, answers and says:

Question. After the purchase by you of the Cleveland judgment, did William P. Lynde, and the firm of Finches, Lynde & Miller, become, and have they since continued to be, your attornies, solicitors, and counsel, in regard to said judgment and the enforcing of the same?

(Objected to for immateriality and irrelevancy, and, further, that, under the order of reference in this case, the masters are not empowered or authorized to enquire into the judgment of Cleveland
366 against the La Crosse & Milwaukee Railroad Company, for any purpose, or into anything connected therewith.) (The defendants' counsel, Mr. Carpenter, offers, in connection with this question, to prove that after the said Chamberlain purchased the said Cleveland judgment, as stated by said Chamberlain in his former examination before these masters, that he immediately employed the firm of Finches,

Lynde & Miller as his solicitors, and William P. Lynde, esq., of that firm, as his counsel in the suit in equity in the name of said Cleveland, complainant, and against the La Crosse & Milwaukee Railroad Company, and the said Chamberlain and others, defendants; which suit was commenced in this court to enforce collection of said judgment against said company, said Chamberlain, and others; that the said Chamberlain caused the appeal to be taken in said cause, which is now pending in the Supreme Court of the United States, and that such appeal is now prosecuted and defended in said Supreme Court by and at the expense of the said Chamberlain, and at his expense alone, and that no party or person is represented or acting on either side of said appeal except said Chamberlain; and that the stipulations which are filed in said cause, and dated subsequent to said purchase, are signed by attornies on behalf of complainant and defendant, who are retained and employed only by the said Chamberlain; and for this purpose Mr. Carpenter asks the foregoing question.

The objection being insisted upon by the counsel for the defendant Selah Chamberlain, the same is sustained, and the foregoing question is overruled by the masters.)

MONDAY, 17 *June*, 1861.

(The foregoing question and offer having been submitted to the Hon. A. G. Miller, judge of this court, and he having decided that the evidence excluded as above should be received, the question is now renewed; the counsel for the defendant Chamberlain again objects to the said question, for the reason that the same is immaterial and irrelevant, and such objection being overruled, the defendant, Chamberlain, answers as follows:)

Answer. I was out of the State at the time that that judgment was purchased.

I returned to the State some two or three weeks afterwards. I have never had a word of conversation with Mr. Lynde or Messrs. Finches, Lynde & Miller about the appeal. I employed Finches, Lynde & Miller on general account, retaining them and paying them a retaining fee, some time before the commencement of the foreclosure suits. I have never employed them in the appeal in the Supreme Court.

Question. Is the law firm of Finches, Lynde & Miller, who appear of record as solicitors for the complainant in the case in the Supreme Court of the United States, in the name of N. Cleveland against
367 the La Crosse & Milwaukee Railroad Company, yourself and others, or is William P. Lynde, who appears of record as counsel in that appeal, acting on your employment and on your behalf therein?

Answer. I have been told by my counsel, Mr. Emmons, that Mr. Lynde would attend to it in Washington for the complainant.

Question. Do you or do you not expect to pay Mr. Lynde for his services as counsel in that appeal?

Answer. I do.

Question. Do you know of any other person or party than yourself who is employing or is to pay said Lynde for his services as counsel on that appeal?

Answer. I do not.

Question. Did you not direct your attorney, Mr. Emmons, at or about the time this judgment was purchased, to have Finches, Lynde & Miller, or Mr. Lynde, substituted as solicitors or counsel for the complainant in that cause?

Answer. I did not.

Question. Who employed Mr. Lynde to act as counsel in that cause after the appeal was taken?

Answer. I suppose that Mr. James B. Cross did, he having purchased the judgment.

Question. Did Mr. Cross do this by your directions or authority?

Answer. He did not. I did not know anything of it.

Question. Did not Mr. Cross, in purchasing said judgment and retaining said counsel, act for you in fact, and have you not since ratified and approved what he did, and have you not assumed to pay for said judgment and for such services of said counsel, Lynde?

Answer. He did act for me, and I have ratified his act.

(The foregoing questions are taken, each subject to the objection of Mr. Van Dyke, counsel for Mr. Chamberlain, on the ground of irrelevancy and immateriality.)

Since the judgment was purchased Finches, Lynde & Miller and Mr. Lynde are to be paid by me.

The ballasting contract (Exhibit No. 8) is the first one in order of date on which anything is due me from the railroad company. I can't recollect the date of the first monthly estimate under that contract. The estimates up to the first of May were paid in the company's notes. The notes were given to me, I think, in full of the amounts of the estimates. From the first of May on, some part was paid in money, and I think some notes were given, but the months were not closed up. I can tell by going to the books about the months subsequent to the 1st May. I think the estimate for May was settled
368 by note and cash, but I am not sure. I don't remember now how much was due me on the first September, 1857. From May onward the monthly estimates were not settled, I think, but there was a running account. The books will show all about it while this contract was going on. I had a contract with the company for the construction of the western division, (Exhibit No. 9.) I worked from Portage City to near La Crosse under that contract, between the date of the contract and October, 1857. Monthly estimates were made of the work we did under that contract. The first estimates were paid less the percentage which the company was entitled to retain. I received my payments sometimes from the treasurer of the company, sometimes from Mr. Goodrich, the vice-president. It was paid mostly in drafts on New York, signed by Mr. Goodrich as secretary or vice-president. When I got money it was paid by the treasurer. I kept making demands for payment on the treasurer, on Mr. Goodrich, on the directors, when they were present, after they began to get slack. Mr. Goodrich was generally in the office. He knew that I was unpaid on my contracts; whether he knew to what extent I was unpaid I don't know. The original contracts, of which Exhibits 8 and 9 are copies, were executed on the day they *bare* date. The estimates

made monthly were, I suppose, intended to be made in conformity to these contracts, but I contended all the while that they underestimated the work I had done.

Question. Did you at any time have any other or different contract with the company, or any officer or officers of the company, for doing the work done under these contracts, or any part thereof?

Answer. I never did.

Question. Do you know upon what grounds the president and other officers of the railroad company represented in New York, in August, 1857, that, with the $400,000 proposed to be raised by the second mortgage, they could pay up the contractor and finish the road to Tomah?

Answer. I do not.

Question. Had you advised the president or other officers of the company that with $400,000, in addition to payments already made, they could finish the road to Tomah?

Answer. I never did. The first that I knew of such representations was what I saw in the New York papers, and I was as much surprised as anybody.

Question. Do you say distinctly and unequivocally that there was no private agreement, arrangement, or understanding between you and any of the officers of the company, that for the work done by you, for which estimates were made under either of the two contracts above spoken of, you were to be paid or were to receive, as your compensation, a less sum than that specified in the contracts for said work?

369 Answer. I do.

Question. In what respect did the final estimate of work done under the ballasting contract (Exhibit No. 8) differ from the sum total of the monthly estimates, made, as you have above stated, for work done on said contract?

Answer. It increased the amounts, I don't recollect now how much, and the amount for filling in Fox Lake was included in the final estimate. The final estimate for the work done on the western division increased the amount of the total monthly estimates on that division, I think, about $200,000, but am not sure. I think there was a monthly estimate for the work done in August.

Question. Were you not, in fact, paid and settled with by note or otherwise, in full for all the monthly estimates under these two contracts, up to and including the estimates for July, 1857?

Answer. No sir; I think not. The papers already here (Exhibit No. 10) show every dollar of money that I received and the date of the payment.

Question. What evidence is there before the masters of the fact that you surrendered to the company from time to time the notes which you had received in payment for work, as shown by your account in Exhibit No. 10?

Answer. I don't know that I could say what evidence is before the masters. I don't know any but the books of the company and my own testimony. I have sworn to it.

*Cross-examined by Mr. Van Dyke.*

The increase in the amount of the final estimate over the total amount of the monthly estimates was occasioned by the work done by me after the last monthly estimate was made, and by the fact of the previous underestimating of the work.

The account in Exhibit No. 10 shows the amount *bona fide* due to me from the company at the time it was made, excepting the corrections and additions heretofore testified to before the masters. There was a note with a warrant of attorney given to me for that balance on the day of that settlement. There was nothing included in that note but what was actually and really due to me at that time. The company was not able to pay me the amount due me for work done. I came to town from my office at Portage City very often after money, and could not get it except in small payments. I was doing a very large amount of work, and the company was hurrying me up to get the road completed to Tomah. About the first of September I came here with a full determination to have my pay, or to have it in some way secured, or to stop work. I at that time wanted the company to give
370 me a lien upon a large amount of iron which they had piled up here. I threatened them with legal proceedings on my claim. They had a meeting of the board of directors. About that time they were making chattel mortgages on this very iron to secure land-grant bondholders, I believe. After a long talk they persuaded me to go back and go to work, to put on a bigger force than I had, to complete the road to Tomah at the earliest possible day. They promised to pay in September at least $150,000 in money on the current estimate, and also the notes which I held as fast as they should become due. They said if I would go on, it would enable them to make sale of some land-grant bonds which they had then, so that they could pay me up. I at that time wanted them to give me security on the road and place me in possession of it, when I gave up the idea of security on the iron I wanted the receipts of the road secured to me. They declined doing it, saying that anything of that kind would injure their credit in New York, so that it would be impossible for them to negotiate their securities. At that time they promised me that, in case they should fail to make the payments as they agreed, they would secure me. I went back and went to work, and came here every few days after money. I got what is charged to me as paid in September, 1857. It went on until about the 23 September, when I was here. Mr. Kilbourn had returned from New York. I applied to him for money, reminding him of his promise. He at that time told me that they had been disappointed in selling their bonds in New York; that they had had trouble among the land-grant bondholders who refused to pay up, that they had succeeded in getting only a portion of their second mortgage bonds (on eastern division) subscribed for, and that they were entirely unable to pay me. Then we commenced to negotiate for security on the earnings of the road by the lease or mortgage. On the night of the 26th September the lease and the contract accompanying it were executed. My only object in taking that lease or

mortgage was to secure and get my pay. I worked for that and nothing else. I proposed pretty strongly to have them pay me. If there had been any other way to get any pay I would never have taken the lease, by which I had to work for my pay a second time. I did not enter into the lease with the intent to hinder or delay any other creditor of the company in any manner whatever. My only design was to get my pay. I did not know, I had no reason to suppose, that the company had any such intent in entering into it. I believed their purpose in executing it was to secure to me my debt. I had no reason to suppose anything else. I had no intimate knowledge of their financial condition at that time. I was not at that time aware of any established indebtedness against the road other than the mortgage debts and my own claim. I heard, not from the company but
371 elsewhere, that some notes had been given for some depot property at Madison on the Watertown division, but I did not know whether they had been paid or not. My whole claim was for work done and materials furnished in the construction of the road, and for rolling stock furnished to the road, the particulars of all which have been given in the former testimony.

TUESDAY, 18 *June*, 1861.

Selah Chamberlain, being further cross examined, says:

The lease provided for completing the road to New Lisbon. At that time, 26 September, 1857, the grading and masonry from Portage City to New Lisbon were nearly completed; entirely completed as far as Kilbourn City. The track was completed to Kilbourn City, and partly done from there to New Lisbon. The ballasting was nearly done to Kilbourn City, and a portion of it west from there. I have no other way to estimate the amount of work necessary to complete the road to New Lisbon than the engineer's estimate, made at that time, which was some $56,000, as appears by the evidence already in. I presume that amount was about correct. That was the only work not then done which, by the agreement, was to be paid for out of the after earnings of the road. Some days after the lease was executed the note and warrant of attorney, before spoken of, was given. The sum embraced in that note did not embrace anything but what was actually due to me at the date of that note, and then earned. I had judgment entered on that note in the district court of the United States for this district, which is the same judgment of which evidence has been given in this cause. That note was given to me to secure the payment of the balance then found due to me from the company. In receiving that note and warrant of attorney I had no design, and I knew of no intent on the part of the company, to hinder, delay, or defraud any creditor of the company. My only object was to secure myself. There was nothing said or done, to my knowledge, at the time of that settlement between me and the company, from which I could infer that there was any intent to hinder or delay creditors of the company. The talk was to secure me—nothing else. I pressed the company for other security than the road itself. I did not succeed in getting any other.

Question. Was the road, in its then condition, with the large prior incumbrances thereon, completed only to an interior point, nearly completed only to New Lisbon, full security for the money then due you in the said note mentioned?

Answer. It was not. The railroad company insisted that I should complete the road to New Lisbon, and get my pay from the earnings of the road that should come into my possession. I did not want
372 to do any more work on the road; I wanted to stop. They insisted that I should complete the road to New Lisbon or they would not give me the earnings of the road. They thought that the road completed to that point would command business they could not otherwise get. At the time of the execution and delivery of the lease to me my accounts had not been adjusted or settled. At that time the engineer of the company was instructed to go out on the line and make up the estimates. Upon the execution of the lease I demanded an immediate settlement of my accounts. In talking about the basis of a settlement it was agreed that the engineer should go out and make the final estimate, which was done. He went out and made the estimate, and returned it, I believe, on the morning of the first day of October. The board was in session that morning, and all day, and that night until twelve o'clock, before it was arranged. My whole accounts were gone over very carefully, and, I think, Mr. Palmer, thinking they were not right, went over them a second time with the bookkeeper. He said he supposed I had been paid a great deal more money than I admitted. He found, on the re-examination, that the accounts were correct, I believe, as previously rendered. I claimed then, and always since, that the amount allowed me was not so much as I ought to have had, on account of some items of the work done by me being underestimated by the engineer.

I enquired at that time of the officers of the railroad company whether they owed Mr. Cleveland anything or not; whether he was likely to get a judgment against them. I had heard at the Walker House of a suit pending against them in his favor. They assured me that they had overpaid Mr. Cleveland, and that there was no doubt but they would get a judgment against him of $18,000 to $25,000. I spoke of this first, enquiring of them. No other claim was spoken of that I recollect. There might have been something said about Vose, Livingston & Co. reclaiming the iron which they had sold the company, having got their pay in full in land grant bonds, and which iron then lay piled upon the company's dock here. I had heard something about the intention to reclaim the iron, and I spoke to the officers of the company about it at that time. I was told by the directors or their counsel—I don't remember which—that the iron had been paid for, and that Vose, Livingston & Co. could not disturb it. They told me that the iron was purchased to be laid upon the road, and the contract so provided, and that it could not be reclaimed if not diverted from that object. I had been pressing for security on the iron, and I asked them about this, and they told me this as a reason why they could not give me security on the iron, that it must be laid on the road. At that time they had given a chattel mortgage on the iron to the land-grant bondholders for further security, I believe.

The first time I spoke to them about security on the iron they
373 were about giving the mortgage.

I first knew in the fall of 1860 that Mr. Lynde had been spoken to about his services on the appeal in the Cleveland suit. Mr. Lynde was not retained with my knowledge, nor at my instance. I did not then, nor at any time prior to the month of April, 1861, have the legal title to the Cleveland judgment. James B. Cross had it. James B. Cross' notes, endorsed by Clark Shepardson, were given to Cleveland for the judgment, as I understand. I was not to have any interest in or control over the judgment until I should pay Mr. Cross the amount of the purchase money. He was to hold it as security until I should pay for it, and he was to have the entire control of it. The judgment is assigned to a trustee now as security to Mr. Cleveland for the payment of the balance due to him on it.

Question. Did not Mr. Cross and Mr. Shepardson remain liable to Mr. Cleveland for the purchase money of that judgment, until it was assigned by Cross, and placed in the hands of a trustee with the assent of and as security for said Cleveland? And did not Cross have the sole control of said judgment until the time of such assignment? If yea, state what time it was so assigned for the benefit of said Cleveland.

Answer. Cross & Shepardson remained liable until that assignment, and up to that time. Cross had the sole control of that judgment. That assignment was made about the last of April *of* first of May, 1861.

Question. Has William P. Lynde, or the firm of Finches, Lynde & Miller, at any time since they were retained by you as your counsel, taken any steps in that appeal suit?

Answer. Not to my knowledge.

WEDNESDAY, 19 *June*, 1861.

Selah Chamberlain, being re-examined, says: We continued the work to Lisbon, finishing it to that point, from Portage City. Work was suspended beyond New Lisbon. At the time of the suspension I had on hand horses, carts, tools, implements, to an amount sufficient for working the road. I should estimate the property on hand at the time of the suspension of work to be worth $135,000. I could not tell in what amount I was then indebted to hands and sub-contractors. It was more than $100,000—a good deal more, but I could not say how much. I had then been working on the La Crosse railroad since April, 1856. I had before that had an interest in a contract on the Milwaukee and Mississippi railroad, from a point near Eagle to Madison, which was settled to stop at Rock river, I think, but am not certain. I was here once during the progress of work under that contract, which was the first I had in this State. That was in 1852 or 1853.

374 Question. What amount of capital or monied means did you bring to Wisconsin and invest in railroad contracts at the time you engaged in the contract on the Mississippi road?

(Objected to by counsel for defendant, Selah Chamberlain, as irrelevant, and that the order of reference is not intended to embrace the

Milwaukee and Mississippi railroad, or any other railroad, or railroad contracts, than those mentioned in the pleadings in the suit.) (The objection is overruled, and the question is permitted to be asked.)

Answer. I could not answer that question.

Question. Did you bring $5,000?

Answer. Yes, more than five times that amount. I did not bring any money, but I caused to be brought a very large amount of money for that contract. I could not say how much. We bought and paid for 4,000 tons of iron on that contract.

Question. How much of your private means did you invest in that contract? I do not mean to include that which you borrowed.

(The counsel for Mr. Chamberlain renews the objection last made, and further objects that the question is impertinent. The objection is sustained, and the question is excluded.)

Question. Who was your partner in the first contract on the La Crosse road?

Answer. Stephen H. Alden. He had one-half interest in the construction contract from Beaver Dam to Portage City.

Question. What amount of your individual capital or monied means did you employ in that contract, not including property or money obtained on credit?

(Objected to by Mr. Chamberlain's counsel because it is irrelevant; that no part of the claim is based on the contract inquired into, nor is that contract in evidence; and further, that the question draws a distinction between the ready cash means of the witness and such means as were furnished by him on his own sole credit to carry on the contract. The objection is sustained.)

Question. What was the amount of your individual share of net profits arising out of that contract?

(Objected to by Mr. Chamberlain's counsel for irrelevancy, and because impertinent to this issue. Objection sustained and question excluded.)

Question. At about what time was the work under that contract completed?

(Objected to for the same reason by Mr. Chamberlain's counsel. Objection overruled.)

Answer. In the fall, and during the winter of 1856–'7. The grading was all done in the fall, and the track was finished in the following winter.

375 Question. What amount of your individual capital or monied means did you employ in the contract called the ballasting contract, Exhibit No. 8?

(Objected to by Mr. Chamberlain's counsel for irrelevancy, in this that the question draws a distinction between the individual cash means of the witness and the means procured and furnished solely by him in carrying on the work. Objection overruled.)

Answer. I could not answer that question; that contract and the contract on the western division of the 20 January, 1857, were going on at the same time, and we kept but one set of books, and I cannot distinguish what amount of means went into each.

Question. What amount of your individual capital or cash means

did you employ in both the contracts, to wit, the contracts designated as Exhibits Nos. 8 and 9?

(Mr. Chamberlain's counsel does not object to the subject-matter of the inquiry, but claim that the masters should instruct the witness that he is at liberty to answer as to all means furnished by him and employed on the work, which work, when done by the means so furnished by him, would constitute a claim against the company.)

Answer. I can't answer that question with any definiteness. At the time that I commenced the work from Portage City west I think that my cash capital invested was from $125,000 to $150,000; during the spring and summer of 1857 I put in large amounts at various times.

(The witness is going on further to state, in answer to the last question, that he was obliged, after the settlement with the company in September, 1857, to raise amounts of money in order to pay indebtedness against him for work previously done under those contracts when he is interrupted by the counsel examining him, who objects that such answer is not responsive to the question, which was intended to embrace only the amount put into the work before the settlement.)

Question. What amount of your individual capital or monied means did you employ or invest in executing the ballasting contract (Exhibit No. 8) and the construction contract (Exhibit No. 9) prior to the settlement of 1 October, 1857, not including money or property obtained on credit?

(Mr. Chamberlain's counsel objects to the question, because the counsel examining has no right to draw a distinction between the cash means of the witness employed in carrying on the work and means furnished by the witness from any other source upon his own credit, nor a distinction as to the indebtedness by him personally incurred for work done. The validity of the defendant Chamberlain's claim must depend upon whether he did the work which the company had the benefit of, and with which the company was chargeable, completed and
376 performed by his means or on his credit, and not the company's. He further objects, that it appears in proof that the work was done under a contract which must govern as to the price or compensation for the work, and while the contract stands free from any suspicion of fraud the only question is whether the work was performed, and how much.)

*June* 26, 1861.—(The question last above propounded is withdrawn by the counsel.)

*Re-examination of Selah Chamberlain by the counsel for Sebre Howard and others, continued.*

Question. Was there not a lease of the entire Watertown division (so called) made by the La Crosse Railroad Company at the same time that the before-mentioned lease to you was made?

Answer. Not to my knowledge; I have seen the lease, and I think it was made after mine was made; I know that the lease to D. C. Freeman was made after the lease to me was made; I have seen the

record, and I was here at the time it was made. The Cleveland judgment is now assigned to Alexander Mitchell, as trustee, to hold for my benefit, subject to the payment of the amount due Mr. Cleveland.

*Cross-examination of Selah Chamberlain by the counsel for the defendant Chamberlain.*

Question. What amount were you liable for on account of the work performed by you prior to October 1st, 1857, and up to that time on the contracts stated?

Answer. I can't give the exact amount; I should estimate it to be somewhere between $125,000 and $150,000 that I was in debt at that time for such work.

Question. Was provision made by the company for any part of this?

Answer. Not at all, otherwise than by the judgment and lease.

Question. When you made these contracts (Exhibits Nos. 8 and 9) what was about your personal pecuniary responsibility and what were your means and opportunities of credit in carrying on works of the character mentioned in the contracts?

Answer. I suppose that my real estate, railroad stocks and bonds, and other securities would be worth, at the prices then put on such property, from $600,000 to $700,000. I had no trouble in getting all the money I wanted at that time for carrying on works of the kind on my own notes, without endorsement; when it was necessary I put up collaterals. I was then entirely out of debt.

Question. In carrying on these contracts did the railroad company, or its directors, or any person connected therewith, advance you any money, property, or other thing not by you earned by the terms of the contracts themselves at the times of such payment?

Answer. No, sir; they did not.

Question. Did they meet their engagements with you under
377 the contract?

Answer. They did not. The extent of their failure appears in detail in the proofs already taken in this cause.

The claim against me in favor of Erwin McCall, testified to by me heretofore, has been ordered by this court to be paid by the receiver, the amount being settled, and I have therefore no claim on account of that suit.

Question. When the contract of 8 December, 1857, for a new estimate of the work done by you prior to 1 October, 1857, was made, did the board of directors of the La Crosse Railroad Company consist of the same persons as when the settlement was made with you on the 1 October, 1857, and who on the 8 December was president of the company? And what reason led to such remeasurement and re-estimate?

Answer. There had been a change in the board of directors between the two dates, a majority at the last date being new men from the east. Stephen Clark was president of the new board. The reasons which led to the remeasurement are the same set forth in the contract for the remeasurement. That original contract I now hold in my hands.

(A copy thereof is on file in this cause, marked Exhibit C, and the estimate made in pursuance of said contract, marked D, is also on file in this cause.)

The only object in making the remeasurement was to ascertain the actual amount of work done and the amount due to me. I wanted what was due to me, and nothing more.

S. CHAMBERLAIN.

FRIDAY, 28 *June*, 1861.

Mr. Hubbell appears also for John S. Rockwell, defendant, and on behalf of said Rockwell, as well as on behalf of the other defendants for whom Mr. Hubbell appears, the following depositions are taken:

*Deposition of John Nazro.*

Mr. Hubbell, on behalf of all of said defendants above named, offers as a witness John Nazro, and Mr. Van Dyke, of counsel for Mr. Selah Chamberlain, defendant, objects to the examination of said witness, and to all evidence offered on this reference on behalf of said Rockwell, which objection is overruled by the masters, and the witness, John Nazro, is duly sworn, and says:

I reside in Milwaukee.

Question. Have you in your possession any bonds secured by the third mortgage executed by the La Crosse & Milwaukee Railroad Company, dated 21 June, 1858?

(Objected to by Mr. Van Dyke, counsel for Selah Chamberlain, because the question is irrelevant and immaterial to the issue, and the subject matter thereof is not embraced in the order of reference made in these causes or either of them, which objection is
378 sustained and the question is overruled.)

Question. Are you the owner of any such bonds, and if yea, from whom did you procure or purchase the same, and for what consideration were the same purchased or procured by you?

(Objected to for the same reasons, and the question is excluded.)

JOHN NAZRO.

FRIDAY, 5 *July*, 1861.

Mr. Carpenter and Mr. Van Dyke, counsel as aforesaid, appear.

*Deposition of B. H. Edgerton.*

Benjamin H. Edgerton, being called as a witness and duly sworn, says:

I reside in Milwaukee. I am by profession a civil engineer, and have followed that for some 22 or 23 years. I have been employed on the Milwaukee & Mississippi, now the M. & Prairie du Chien railroad, since 1849. I am familiar with the methods and processes of measuring work done on railroads. I have been over a portion of the La Crosse and Milwaukee railroad; that portion between Milwaukee and the tunnel.

Question. Can the work done on that railroad be measured and computed at the present time, so as to approximate to the actual amount of work done on building the road?

(Objected to as being irrelevant, and for the further reason that the subject of remeasurement is not before the masters. Objection overruled.)

Answer. I think the road could be measured so as to show approximately the whole amount of work which has been done upon the road up to this time.

This is true, whether the measurement should be in an embankment or in a cut.

I am acquainted, and was at the time, with the value of wor ksuch as was done on the La Crosse railroad, while that road was being constructad. I was engaged as an engineer in the construction of the Mil. & Miss. railroad, and was familiar with the prices of that class of work, except tunnelling, on which I had had no experience. I have never seen the tunnel since it was completed. I presume the excavation could be as well measured now as when it was done. It might be sheathed so that the work could not be seen accurately.

Question. What was the difference in value of excavating between solid rock and loose rock at the time the work was done on the La Crosse railroad?

(Objected to because the work in this case was done under a contract, and the evidence sought is immaterial. Objection sustained.)

Question. At the time the La Crosse railroad was constructed what was it fairly and reasonably worth to excavate solid rock, and what was it fairly and reasonably worth to excavate loose rock, taking into account the general nature and character of the work done on that railroad?

379 (Objected to for the same reasons as before. Mr. Carpenter offers further to prove what would be a fair and reasonable price for doing the whole work, and that such price is greatly less than that fixed in this contract. Mr. Van Dyke further objects that at the time of the making of the contract there were no creditors of the company, and it was not indebted. Objection overruled.)

Answer. The classification of solid and loose rock varies very much. The practice of engineers in classifying such work varies very much. I can only speak from my own experience. About that time I had charge of some such work in Iowa, and we paid therefor, what we called solid rock excavation, 75 to 80 cents, and for loose rock, 35 to 40 cents per cubic yard.

Question. In your opinion as an engineer, how near could you, by an accurate and careful measurement, calculation, and estimate of the work appearing to have been done in the construction of this road, arrive at the true amount of work so done?

(Objected to by Mr. Van Dyke as irrelevant. Objection overruled.)

Answer. I should think it might be measured within ten or fifteen per cent. An embankment would be smaller now than it was when the work was done. An excavation would remain about the same, being perhaps a little larger.

Question. Do you mean that, adding from ten to fifteen per cent.

to the amount which would be shown by a present measurement, you would, in your opinion, arrive at the true amount of work done?

Answer. I mean that I could arrive at a result which I should be satisfied in my own mind would be within ten or fifteen per cent. of the true amount. I would make what I should consider a sufficient allowance for shrinkage, &c.

Question. Suppose you were called upon as an engineer to arrive as near as possible at the amount of earth in a given embankment shown to you; that you should first make accurate measurements and calculations of the embankment in its present form, and then should add ten or fifteen per cent. for shrinkage; would that, in your opinion, give about the true amount of earth originally deposited?

Answer. I think an embankment, by adding a proper percentage, could be measured to show very nearly the true amount. After making the allowance, there would still be an uncertainty of perhaps ten or fifteen per cent. as to the amount actually put into it.

Question. In your opinion as an engineer, shown you a given embankment, can you, by an accurate examination of the surface upon which it is deposited, the character of the materials deposited,
380 and all the natural circumstances surrounding the embankment, estimate and judge with a reasonable degree of certainty what percentage ought to be added for the shrinkage during any given number of years?

(Objected to by Mr. Van Dyke for uncertainty, immateriality, and because it calls for testimony secondary in its nature. Objection sustained.)

(Examination of Mr. Edgerton suspended.)

*S. Chamberlain recalled.*

SATURDAY, 6 *July*, 1861.

Selah Chamberlain, recalled by Mr. Carpenter, testifies and says:

The ballasting contract was the first contract which I had with the La Crosse Railroad Company, which is connected with my judgment against it. This item in my account, 45¼ miles ballasting, *a* $2,000 a mile, $90,500, was not under this contract, but was for ballasting on the western division, under the contract of 20 January, 1857.

The material for ballasting done as above, to the amount of $90,500, was mostly obtained at various points along the line of the western division, some of it in Portage City, perhaps 10,000, 15,000, or 20,000 yards, I can't say how much; the engineer's estimates will show, and I could not pretend to say how much.

*Cross-examined by Mr. Van Dyke.*

It was ascertained that the ballasting on the eastern division, between Beaver Dam and Portage City, at forty cents per yard, (the contract price,) amounted to $2,200 or $2,300 per mile, and I claimed that I ought to be allowed at that rate on the western division, but the engineer estimated only $2,000 per mile, and the company would only allow that, and I finally settled with them at that rate.

S. CHAMBERLAIN.

*B. H. Edgerton recalled.*

Benjamin H. Edgerton, recalled, says:

*Cross-examined by Mr. Van Dyke.*

Where a road is built under a contract, at the rate of so much a mile, the only measurement necessary to ascertain the amount done is the length of the road.

I mean by my testimony that I could now make a measurement of the work done on the La Crosse railroad, or on any part of it, from which I could determine within ten or fifteen per cent. the amount of work done up to the time of measurement.

Question. Suppose you now had made that measurement of the whole La Crosse road, and should ascertain to your own satisfaction, by making allowances, as you state, the amount of work that had been performed on the road up to the time of measurement, how would that fact, when ascertained, enable you to determine
381 how much of the work was done up to a given period, it appearing that the work done up to that period was done in uncompleted portions along the whole line?

(Objected to by Mr. Carpenter as incomprehensible. Objection overruled.)

Answer. I don't know that I could by measurement of the work now determine how much had been done up to any particular time. I could only determine how much had been done up to the time of measurement.

Question. Could any measurement now made of the road determine with anything like the accuracy that the engineer in charge of the work on the line, with his cross sections and field and working notes, could measure the work, with the general knowledge of the material and work which he would have from his general superintendence?

Answer. I should think it would be impossible to measure it so accurately without as with the field notes. Any measurement now would be an approximate measurement.

Question. You have stated that you could make an approximate estimate within ten or fifteen per cent. of the work. Now, after you had made a survey and classification of the rock without the original survey or working notes, would you be willing to swear that you could come within thirty per cent. of the amount of that portion of the work?

Answer. The amount of rock work would be the most difficult to ascertain of any part of the work. Further, in a through cut I could ascertain the amount of the work within thirty per cent., but on a side cut I could not ascertain with much accuracy.

I could ascertain very nearly the quantity of material in the foundations, but I could not tell about the expense of getting it into its place.

*By the masters.*

I think competent engineers going over this work, and measuring and estimating it, would come within ten or fifteen per cent. of the same amount.

Some foundations or walls might be so covered up as to make it difficult to get at the amount, but it would not be impossible. The size and quantity of the material could be measured with tolerable accuracy, but the expense of putting it in could not be determined with any accuracy. It would vary with many circumstances.

It would now be very difficult to ascertain the amount of extra haul (earth carried over 500 feet) done by Chamberlain, because the company has probably done a great deal of work, but it would not be difficult to ascertain by observation and measurement all the extra haul which had been done up to the time of measurement.

I think the amount of bank wall which has been constructed could be measured. I don't mean that the bank wall which has
382 slipped into the river could be measured, but only that in position. I think that the road is washed by the river for only a little ways.

*Re-examined.*

The portions of the road which would be difficult of measurement are only a small proportion of the whole work on the road.

Question. If the estimate made by the engineer in charge of the work between Portage City and La Crosse is, for some unaccountable reason, five or six hundred thousand dollars too large, would a remeasurement of the work be likely to detect such an error?

(Objected to because the supposition is not based upon any testimony in the case, nor has any proof been given of any inaccuracy or over estimate in the original estimate of the engineer Woodward, or in that shortly thereafter made by Woodward & Sill, both in evidence in this case, with their testimony as to the manner and amount of their estimate. Objection overruled.)

Answer. A remeasurement of the work, when the prices are fixed and known, would be likely to detect the error.

*Cross-examined.*

Question. Do you know of any errors or inaccuracies in the estimates of Woodward, the chief engineer of that road, or *the* in the subsequent estimate by Woodward & Sill, of the work performed by Chamberlain on the road?

(Objected to as immaterial and incompetent. Objection overruled.)

Answer. I can only say that at the time we made the measurement, in 1857, we were shown an estimate purporting to have been made by Mr. Woodward, wherein the quantities of some items were materially different from the quantities which we ascertained.

(Mr. Chamberlain's counsel objects to the foregoing answer, for the reason that it is not responsive, which objection was made also before the answer was fully made )

Question. Do you know of any errors or inaccuracies in those estimates, and have you ever seen the final estimate made by Wooodward, or the estimate of Woodward & Sill?

Answer. I have never seen any estimate made by Woodward &

Sill. I saw what purported to be the final estimate of Mr. Woodward. We so understood it at the time

Question. Do you know whether the paper shown you, purporting to be a copy the final estimate made by Woodward, was in fact a copy of that estimate?

Answer. I do not know.

B. H. EDGERTON.

383 (Mr. Carpenter offers to read the depositions of engineers in the Exhibit No. 24, and Mr. Van Dyke, of counsel for the defendant Chamberlain, requests that such depositions be not read in the hearing of engineers in attendance upon this examination, whom Mr. Carpenter proposes to call upon the same points testified to in the said depositions. The depositions are allowed to be read.)

*E. H. Goodrich recalled.*

MONDAY, 8 *July*, 1861.

Edwin H. Goodrich, being recalled as a witness by Mr. Carpenter, counsel as aforesaid, testifies and says: I am manager of the La Crosse railroad, under Mr. H. Crocker, receiver. I do not know where the field note books and profiles of the road are. They may be at the office of the company in this city. There are some books and papers there, some parts of a profile. I don't know whether the entire profile. These are not in my charge. They are, I suppose, in the receiver's possession. I have in my possession a profile made by one of the engineers in the employ of the company, a year or a year and a half after the completion of the road, for my use in running the trains, to show the grades. I don't think it is accurate. I think the field notes are in one of the rooms of the depot building in this city. I have no copies of them.

(Objected to by Mr. Van Dyke as irrelevant.)

EDWIN H. GOODRICH.

*Stipulation as to testimony.*

In district court of the United States for the district of Wisconsin—In equity.

GREEN C. BRONSON and JAMES T SOUTTER, *compl'ts.*
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND OTHERS, *def'ts.*

It is stipulated and agreed by the subscribing parties to the above entitled cause that before the masters appointed in this cause either or any person or party entitled to examine witnesses before said masters may read in evidence any part of, or all of the testimony or depositions taken in a cause in said court, in equity, in which Newcomb Cleveland was complainant, and said La Crosse Milwaukee Railroad Company and others were defendants, in which cause the bill of complaint was filed on or about the 31 day of October, A. D. 1857.

All of said testimony to be subject to all and every objection as to

its materiality which could be urged or made if the witnesses were called and again orally examined before said masters.

Nothing herein contained is, however, to be so construed as to
384 admit the record of said Cleveland suit, or the decree therein as evidence before said masters, or in this cause, but this agreement is made with a view solely of dispensing with the necessity of calling witnesses to testify. Either party, however, may call any one or more of said witnesses for the purposes of explanation, or otherwise.

It is further understood that neither party waives any objection already made, or any which he might or could urge to this reference, or any question which may arise on the report of the masters. Either party desiring to introduce any one, or part, or parts of any one or more of said depositions or testimony used in said Cleveland cause shall furnish copy or copies thereof to the masters from time to time, as the testimony may be in progress.

The object of this stipulation being to consent to said testimony, and waive all objections to the same being used, without retaking the same in this cause, and before said masters, nothing else being waived by either party in relation to the same, and each party having a right to object to the materiality of the same when offered. This is done for convenience, and to save expense.

Dated April 9th, 1861.

EMMONS, VAN DYKE & HAMILTON,
*Solicitors for Chamberlain.*
MAT. H. CARPENTER.
CARPENTER & GRIDLEY,
*Sol for Graham & Scott, counsel for Sebre Howard, solicitor for Mil. and Min. R. R. Co.*

*Certificate of Master.*

DISTRICT OF WISCONSIN, *ss*:

We, the masters hereinbefore named, return the foregoing depositions and minutes of examinations, and the exhibits therein referred to, numbered from 1 to 39, inclusive. The counsel who have attended the examinations, the dates of taking the same, the objections made by counsel, and our decisions thereon, the interrogatories propounded to the witnesses, (when desired,) and the references to written evidence introduced, are all hereinbefore stated. The witnesses named were each sworn by us, before being examined, to testify the truth, the whole truth, and nothing but the truth, upon such examination, and his answers so taken on oath were carefully reduced to writing by one of us in his presence, and then read over to and subscribed by him.

Dated this seventh day of October, A. D. 1861.

WINFIELD SMITH, *Master.*

385 EXHIBIT No. 1.

*Statement of earnings and expenses of La Crosse and Milwaukee railroad, from October 1, 1857, to November 30, 1859, as operated by S. Chamberlain.*

| | Freight. | Passengers. | Miscellaneous. | Total. | Expenses. | Nett earnings. |
|---|---|---|---|---|---|---|
| 1857. | | | | | | |
| October | $24,850 87 | $21,413 45 | $887 90 | $46,352 18 | $15,781 89 | $30,570 29 |
| November | 24,337 24 | 13,522 61 | 616 70 | 38,476 55 | 13,778 30 | 24,698 25 |
| December | 10,730 27 | 17,497 77 | 648 88 | 28,876 92 | 13,723 61 | 15,153 31 |
| 1858. | | | | | | |
| January | 12,758 24 | 10,702 67 | 775 86 | 24,236 17 | 11,730 25 | 12,505 92 |
| February | 10,651 00 | 8,946 48 | 437 92 | 20,035 38 | 9,864 20 | 10,171 18 |
| March | 13,040 48 | 12,679 38 | 544 70 | 26,264 56 | 13,341 68 | 12,922 88 |
| April | 17,852 25 | 13,785 21 | 2,053 03 | 33,690 49 | 14,538 47 | 19,152 02 |
| May | 23,803 76 | 17,942 93 | 632 74 | 42,379 43 | 16,511 44 | 25,867 99 |
| June | 28,153 79 | 15,043 54 | 678 21 | 43,875 54 | 20,485 81 | 23,389 73 |
| July | 28,267 40 | 17,316 34 | 2,025 27 | 47,609 01 | 22,437 58 | 25,171 43 |
| August | 20,029 05 | 16,885 08 | 767 99 | 37,682 12 | 24,051 71 | 13,630 41 |
| September | 37,248 03 | 23,714 34 | 2,339 18 | 63,301 55 | 26,181 24 | 37,120 31 |
| October | 32,255 48 | 28,357 87 | 941 17 | 61,554 52 | 32,623 36 | 28,931 16 |
| November | 26,944 10 | 27,003 05 | 1,054 83 | 55,001 98 | 32,257 55 | 22,744 43 |
| December | 18,937 58 | 13,368 92 | 4,516 55 | 36,823 05 | 24,305 83 | 12,517 22 |
| 1859. | | | | | | |
| January | 19,304 68 | 14,972 06 | 916 69 | 35,193 45 | 28,777 74 | 6,415 71 |
| February | 16,835 24 | 17,869 51 | 898 52 | 35,603 25 | 33,152 63 | 2,450 62 |
| March | 15,947 73 | 18,433 13 | 1,999 78 | 36,380 64 | 34,818 76 | 1,561 88 |
| April | 18,916 17 | 18,786 05 | 1,086 16 | 38,788 38 | 38,213 17 | 575 21 |
| May | 23,865 83 | 21,973 28 | 1,011 20 | 46,850 31 | 32,824 72 | 14,025 53 |
| June | 17,556 63 | 26,770 49 | 5,672 55 | 49,999 67 | 31,824 08 | 18,175 59 |
| July | 15,833 68 | 16,343 58 | 1,039 22 | 33,216 46 | 32,554 36 | 662 10 |
| August | 17,488 38 | 21,119 66 | 5,995 58 | 44,603 60 | 25,294 62 | 19,308 98 |
| September | 64,660 53 | 29,223 89 | 5,507 39 | 99,391 81 | 33,127 33 | 66,264 48 |
| October | 90,233 80 | 19,919 69 | 1,086 97 | 111,240 46 | 39,260 09 | 71,980 37 |
| November | 62,133 28 | 21,263 41 | 6,131 34 | 89,528 03 | 49,480 18 | 40,047 85 |

386 EXHIBIT No. 2.

$5,000. OFFICE OF THE LA CROSSE & MILWAUKEE RAILROAD CO.,
*Milwaukee, Sept.* 4, 1857.

On the first day of October, without acceptance, pay to the order of S. Chamberlain five thousand dollars, value received, and charge to account of

LA CROSSE & MILWAUKEE R. R. Co.
By EDWIN H. GOODRICH, *Vice Pres't.*

EXHIBIT No. 3.

*La Crosse & Milwaukee R. R. Co. to S. Chamberlain & Co., Dr.*

1857.

| | | |
|---|---|---|
| Sept.—For expenses in getting engine and iron over river. | | |
| paid McDonald & Co. for lumber for scow..... | 27 | 21 |
| paid Fenehout for soup pail, axe, &c..... | 4 | 55 |
| 14 days, team hauling wood over river..... | 49 | 00 |
| 1 day picking up and throwing wood..... | 1 | 25 |
| laborers, per pay-roll in August..... | 665 | 57 |
| add 25 per cent..... | 166 | 39 |
| laborers, per pay-roll in Sept..... | 1,764 | 37 |
| add 25 per cent..... | 441 | 09 |
| | 3,119 | 43 |

I have examined the above bill and find it correct.

(Signed) E. W. WOODWARD,
*Chief Engineer.*

Dec. 31, 1857.

EXHIBIT No. 4.

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, on the second part, witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree to and with each other, that the contract heretofore entered
387 into between the said parties for the construction of the western division of the La Crosse & Milwaukee railroad, from Portage City to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplimental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are hereby, modified as follows, viz:

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch and by the first day of December next.

The time for completing the said railroad from New Lisbon to La Crosse is extended indefinetly, and the said party of the second part shall construct the said railroad between the two points last named as fast as, and no faster, than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash or monthly estimates, according to the terms and stipulations of the aforesaid contracts.

The contract entered into by and between said parties on the 20th day of November, A. D. 1856, for the ballasting of that portion of the

La Crosse & Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said works, but that the motive power and cars so used shall be a part of that specified in the contract between the said parties entered into simultaneously with the contract for the leasing of the said road, and that the said party of the second part shall, for all ballasting which he shall do after the 30th day of September, A. D. 1857, specified in said contract, and for all other ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension, and by loss on teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due him, and the amount to become due to him for finishing said road to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further
388 consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad, as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid considerations.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amount due to the said party of the second part on the 30th day of September, A. D. 1857, under and by virtue of the said contracts of January 20, 1857, April 30, 1857, and November 20, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, shall be the bal. due to the said party of the second part on the 1st day of October, 1857, and shall be charged by the said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under and by virtue of either of said contracts, or of this contract, in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties that on the 1st day of July, 1858, and on the first day of each July and each January

thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making up such account at the rate of twelve percentum per annum.

It is further agreed between the said parties, that whatever sum shall hereafter become due to said party of the second part, for any work done in the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of
389 the second part has affixed his signature and seal the day and year first above written.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By BYRON KILBOURN, *President*,
(Signed) JACKSON HADLEY, *Secretary*.
S. CHAMBERLAIN. [SEAL.]

EXHIBIT No 5.

Copy.

Estimate of gravelling done on the eastern division of the La C. & M. R. R. bet. Sept. 1, 1858, and Jan'y 1, 1859:

| | | |
|---|---|---|
| From gravel pit on section | 28 | 5,307 c. y'ds |
| " " " " | 14 | 14,306 " |
| | | 19,613 " |

I certify that the above estimate is correct.

J. M. L. STOUGHTON, *Eng'r*.

MILWAUKEE, *February* 4, 1859.

EXHIBIT No 6.

Copy.

La Crosse and Milwaukee Railroad to S. Chamberlain, Dr.

1857.

Nov. For this amount paid L. B. Boomer for stone, cutting same, and cement for canal bridge, Portage City, viz:

| | |
|---|---|
| 225,78 perch stone, at $2 50 | 563 16 |
| 72 days' work cutting stone | 216 00 |
| Blacksmith | 15 00 |
| Cutting 33, 24 perch stone | 124 65 |
| 57 bbls. cement | 171 00 |
| | $1,089 81 |

The above is correct.

J. M. L. STOUGHTON, *Chief Engineer*.

390 EXHIBIT No. 7.

$1,500.—No. 509.

MILWAUKEE, *June* 7, 1858.

Twelve months after date, for value received, the La Crosse & Milwaukee Railroad Company promise to pay Jacob A. Hoover, or order, at the Marine Bank in the city of Milwaukee, fifteen hundred dollars, with interest at ten per cent. per annum, till paid.

LA CROSSE & MILWAUKEE RAILROAD COMPANY,
(Signed) By N. P. STANTON, *President.*

$1,500.—No. 508.

MILWAUKEE, *June* 7, 1858.

Six months after date, for value received, the La Crosse & Milwaukee Railroad Company promise to pay Jacob A. Hoover, or order, at the Marine Bank in the city of Milwaukee, fifteen hundred dollars, with interest at ten per cent. per annum, till paid.

LA CROSSE & MILWAUKEE RAILROAD COMPANY.
(Signed) By N. P. STANTON, *President.*

*Land contract.*

Jacob A. Hoover with the La Crosse & Milwaukee Railroad Company.

This article of agreement, made and concluded this 7th day of June, 1858, by and between Jacob A. Hoover, party of the first part, and the La Crosse & Milwaukee Railroad Company, party of the second part, witnesseth: First, that the said party of the second part hereby agree and bind themselves, and their successors, legal representatives, to pay or cause to be paid to the said party of the first part, his heirs or assigns, the sum of four thousand dollars, in manner following: One thousand dollars at the ensealing and delivery hereof; fifteen hundred dollars in six months from the date hereof, with interest at ten per cent. per annum; and fifteen hundred dollars in twelve months from the date hereof, with interest at ten per cent. per annum, according to the conditions of two certain promissory notes, bearing even date herewith, executed by the said party of the second part, in favor of the said party of the first part, the said payments to be made to the party of the first part in person, at the Marine Bank in the city of Milwaukee, and the same being intended to apply, when fully completed, as the purchase money of the following tract or parcel
391 of land, situated in the sixth ward of the city of Milwaukee, on the river, in the county of Milwaukee and State of Wisconsin, known and described as lot numbered four, (4,) in block numbered thirty, (30.)

The said parties of the second part further agree and covenant that they will pay all taxes, special or general, which have been assessed on the above described premises since the day of the date hereof, and

also all such as may hereafter be assessed thereon, whenever such taxes shall become due and payable by law, until the aforesaid purchase money shall be fully paid, in the manner above stated, and also to hold said premises from the date hereof, as the tenant at sufferance, of the said party of the first part, subject to be removed as a tenant holding over, by process under the statute in such case made and provided, whenever default shall be made in the payment of any of the instalments of the purchase money above specified, and also to keep the buildings, fences, and improvements on said premises in as good repair and condition as they now are, except ordinary wear and decay and damage by the elements.

Second, the said party of the first part hereby agrees and binds himself, his heirs, executors, and administrators, that in case the aforesaid sum of three thousand dollars, with the interest, shall be fully paid at the times and in the manner above specified, he will, on demand thereafter, cause to be executed and delivered to the said party of the second part, or their legal representatives, a good and sufficient deed in fee simple in the law of the premises above described, free and clear of all legal liens and incumbrances, except the taxes herein agreed to be paid by the party of the second part; and the said party of the first part further agrees and covenants to pay to the said party of the second part, or *his* legal representatives, the sum of five thousand dollars as penalty, in case of failure on his part to execute the deed above mentioned, whenever the said party of the second part shall have punctually and fully complied with this agreement on his part. But it is distinctly agreed and understood by and between the parties hereto that if the said party of the second part shall fail to make any of the payments of the purchase money above specified at the time and in the manner above described, in such case this agreement shall be thenceforth utterly void, and all payments thereon forfeited, subject only to be revived and renewed by the act of the party of the first part, or the mutual agreement of both parties.

In testimony whereof the parties have hereunto set their hands and seals the day and year first above written.

J. A. HOOVER. [SEAL.]

LA CROSSE & MILWAUKEE RAILROAD COMPANY,
[SEAL.] By N. R. STANTON, *President.*

In presence of—

392 STATE OF WISCONSIN,
*Milwaukee County, ss:*

On this twenty-first day of December, A. D. 1858, personally came before me, J. A. Hoover, of the city and county of Milwaukee, Wisconsin, the grantor in the within contract, to me known, and acknowledged that he executed the same freely and voluntarily.

C. A. WALWORTH,
*Notary Public, Mil. Co.*

Recorded December 22d, 1858, at 9 o'clock a. m.

EXHIBIT No. 8.

(BALLASTING CONTRACT.)

NEWCOMB CLEVELAND *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN AND OTHERS. } In equity.

*Schedule C.*

Memorandum of an agreement made and entered into this twentieth day of November, 1856, by and between the La Crosse and Milwaukee Railroad Company of the first part, and Selah Chamberlain of the second part, witnesseth: That for and in consideration of the stipulations and payments hereinafter mentioned, the said party of the second part hath, and doth hereby agree to ballast that portion of the La Crosse and Milwaukee railroad extending from the city of Beaver Dam to the city of Portage. The work to be done in a good and workmanlike manner for the sum of forty cents per cubic yard; the material to be measured in the bank at the gravel pits; the railroad company furnishing motive power and gravel cars sufficient to do the work to good advantage, (not exceeding one locomotive engine and forty dumper cars, or, in their stead, twenty-four platform cars, unless a greater number of locomotive engines and dumper or platform cars shall be mutually agreed upon,) free of all cost to the said second party. The track shall be raised at least eighteen inches above subgrade, and as much more as shall be required; to be completed in all respects under the direction and subject to the approval of the engineer of this company in charge of the work. The said railroad company are to furnish all grounds required for gravel pits, and
393 trucks necessary for the same; the said work to be prosecuted in such a manner as not to hinder or delay the passage of any of the regular trains of the company; but it is agreed and understood that the said railroad company are to keep the track in good running order during the execution of this contract, and pay the actual cost of any detentions that may be caused by the railroad company's trains being behind time; but that no claim shall be made by the party of the second part for detentions, unless the company's trains are more than thirty minutes behind time-table time.

It is also agreed that when freight trains are twenty minutes behind time the gravel train shall be allowed to run out in the same direction as the expected train is running, and dump, always stationing a man with a red flag at least one-fourth of a mile from the gravel pit run from, to warn approaching trains. It is also agreed that the party of the second part will, upon request of the superintendent of the road, transport to and dump gravel upon any portion of the line of the same embraced in this contract, when gravel is required to repair portions of the said road before the same is ballasted, and that the work herein contracted to be done shall be completed on the thirty-first day of July, A. D. 1857. It is also agreed that the party of the second part may

furnish thirty dumper cars at his own cost and charges to be used on the work herein contracted to be done, and that the party of the first part will, upon completion of the said work, purchase the said dumper cars and pay to the said party of the second part the actual cost and charges incurred in the purchase and transportation of the said dumper cars from the point where the same were purchased to the city of Milwaukee; said payments to be made on the 1st day of August, 1857. It is also agreed that for all work done under this contract, monthly estimates shall be made by the engineer of the said party of the first part on the first day of each month for all work done during the preceding month, and that for all work so done prior to the first of May, 1857, payments shall be made in the company's notes notes due and payable in the city of New York six months from the time of rendering of said estimates, with interest at the rate of seven per cent. per annum; and for all work done under this contract subsequently to the first day of May, 1857, payments shall be made in cash on monthly estimates to be made as hereinbefore provided. In testimony whereof, the said parties have signed this memorandum in the manner following, to wit: The La Crosse and Milwaukee Railroad Company, by Moses Kneeland, vice-president thereof, (the president being absent,) and the party of the second part for himself

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By MOSES KNEELAND, *Vice-President.*
(Signed) S. CHAMBERLAIN.

394 *Schedule A.*

ENGINEER'S OFFICE LA CROSSE & MILW. R. R.,
*Milwaukee, Oct. 1st*, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the eastern division of the La Crosse and Milwaukee railroad under this contract, for ballasting that portion between Beaver Dam and Portage City from commencement to date:

| | |
|---|---|
| Ballasting 192,542 y'ds, at 40 | $77,016 80 |
| To this is to be added for filling in the bank at Fox Lake | 20,768 65 |
| | 97,785 45 |

I hereby certify that the above estimate is correct.
E. W. WOODWARD,
*Chief Engineer.*

EXHIBIT No. 9.—CONTRACT.

*Schedule E.*

This agreement, made and entered into this twentieth day of January, 1857, between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth: That the said party of the second part, for and in consideration of the several covenants, stipulations, and payments on

the part of the said party of the first part, hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby constructs and agrees to contract for said party of the first part a single tract sub-grade railroad, except when ballast can be found on the section known as the "western division" of the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse, (except the bridge at Kilbourne City,) it being supposed to be about one hundred and ten miles of main line, all the side tracks to be paid for in addition to the main line, and at the same price per mile.

The work included in this contract is the grading, bridging, culverts, ties, chairs, spike, and laying the track, which shall be laid by centre stakes and without grades. The work to be done in a substantial and workmanlike manner, for the sum of twelve thousand dollars per mile of main line, and the same sum per mile of side track.

GRADING.—The road bed shall be graded fourteen feet wide on embankments at sub-grade, and eighteen feeet wide in excavations; the excavations and embankments are to have such slopes as the engineer may direct, but not to exceed one foot and a half horizontal to
395 one foot vertical, and no waste earth shall be deposited within three feet of the top of the slopes of excavations, nor any borrowing ditches be dug within five feet of the base of embankments.

The said railroad company are to furnish grounds convenient to waste earth when from excavations, and to borrow earth from for embankments for the road bed.

MASONRY.—All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two miles of the point where structures are to be put in. Should stone be found within the above limits, the bridges, abutments, and piers, if any, shall be of rough masonry, with good beds and joints. No backing shall be used of less thickness than four inches, unless required for levelling up. Common lime mortar shall be used in all bridge masonry. Culverts shall be constructed of rough stone, and without mortar.

CROSS-TIES.—The cross-ties are to be hewed or sawed, and to be of red, white, bur, and black oak, cedar, spruce, tamarack, gray or Norway pine, black walnut, or ash, and are to be six inches thick, eight feet long, and are to have a bearing surface of not less than seven inches. Ties shall be laid in track two feet and three inches from centre to centre, and twenty-three hundred and forty-four ties shall be laid in each mile of track.

TRACK LAYING.—The track shall be laid in the usual way of laying sub-grade track, with a "T" rail and common wrought iron chair, the spike to be five inches long and half an inch square. The said party of the first part agree to furnish the said party of the second part with locomotive power and a sufficient number of platform or suitable cars for the transportation of iron chairs, spike, ties, timber, and other materials on said western division required during the execution of this contract, free of all cost and charges to said second party; and the said party of the first part also agrees that the contractor shall be passed free over the road during its construction, and any of his agents, necessary for their business, shall be furnished with

a pass from the president or superintendent, and laborers with their families and baggage once out to the work, on passes furnished by the contractors or his agent, on any freight or construction train.

EXTRA WORK.—It is hereby mutually agreed and stipulated between the parties to this agreement, that all grubbing and clearing, all excavations of rock, quick-sand, indurated clay, or cemented gravel, all foundations for masonry, all piling and hauling of excavations or embankments over five hundred feet, shall be considered extra work, and shall be paid for at at the following rates, to wit: grubbing and clearing, three hundred dollars per mile the entire length of main line; loose rock excavations, seventy-five cents per cubic yard; dry solid rock, one dollar per cubic yard; rock excavations in di-
396 viding ridge, one dollar and twenty-five cents per cubic yard; quick-sand excavations, one dollar per cubic yard; hard-pan indurated clay, or cemented gravel, seventy-five cents per cubic yard; for all hauling of excavation or embankments over five hundred feet, one cent extra per cubic yard for each one hundred feet: *Provided*, That if the aggregate of earth work shall fall short of the maximum of 20,000 cubic yards per mile, then 25 cents per yard is to be deducted from the above-mentioned price for rock, hard-pan, indurated clay, or gravel.

SUBDIVISIONS AND LIMITS OF QUANTITIES.—It is further agreed and understood, that the work embraced in this contract is to be divided into three subdivisions of nearly equal distances, and should the quantities of excavations and embankments on any one or more of the subdivisions exceed twenty thousand yards per mile, such excess shall be paid for as extra work, at the rate of forty cents per cubic yard; and it is agreed that the quantities shall be as much below the above limits as practicable, consistent with a proper regard for the location of the work; and due care shall be taken in the location of the line to produce the most favorable results in this respect. It is also agreed that all excavations from the cuts shall be hauled into embankments when it can be done within a reasonable haul, and shall be computed as excavation or embankment only.

The railroad company agree to furnish the iron rails of the "T" pattern, notched, ready for laying, and deliver at Portage City a sufficient amount to lay the track to Kilbourn City, and at the latter point the balance, sufficient to lay the track to La Crosse, and pile the same in a convenient place to load on to the cars, and keep a full supply always on hand, and forward to same point all chairs and spikes required to be used in laying said iron in track free of charge for transportation, and furnish motive power and cars to transport to Portage City all ties or materials for construction now owned by the said party of the second part, and on the line of the eastern division of the road of the party of the first part. It is also agreed by and between the parties that the said party of the first part agrees to do all engineering, and to have the work ready at all times for said party of the second part, so as not to hinder or delay the work, and to have the work divided off into sections of one mile each, being each regular surveyed mile on the line. The said first party also agrees to furnish all rights of way, and obtain grounds for wasting material

or from excavations, and borrowing from the embankment so as not to delay or hinder the progress of the work; and it is further mutually agreed between the parties to this contract, that if, in the course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement, or as to the manner of doing the work herein contracted to be done, all such matters of difference shall be at once submitted to three disinterested persons to act in the premises, and should the parties not be able to agree on the third person, the two first selected shall select a third.
397 The three so chosen shall hear the parties and decide the matter submitted to them, and the decision of a majority of them shall be final and conclusive, and their decision as aforesaid shall be irrevocable. It is further agreed that any extra work required to be done for which no price is specified shall be paid for at a fair price. The work shall be commenced by the first day of February next, and be completed to Kilbourn City on the first day of October next, and to La Crosse by the thirty-first day of October, eighteen hundred and fifty-eight. The said party of the first part agree that the bridge at Kilbourn City shall be completed and ready for the track by the first day of October next.

ESTIMATES AND PAYMENTS.—Estimates shall be made on the first day of each month by the engineer in charge of said work of the amount of work done and materials furnished by said party of the second part during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to said party of the second part; and the said party of the first part covenants and agrees to pay to said party of the second part, on the fifth day of each month, ninety per cent. of the amount of such estimates so to be made on the first day of each month; such payments shall be ninety per cent. of such proportionate sum of the whole amount to be paid under this contract as such work and materials so estimated bear to the whole work and materials embraced in this contract. All estimates shall be paid by sight drafts, payable in New York. The retained percentage shall be paid on the completion of each division of 34 miles.

It is also mutually agreed or understood by and between the parties hereto that at any time during the progress of said work the said party of the first part shall have the right to suspend the performance thereof during such times as they may think expedient, and again require the same to be resumed by the party of the second part, without being held liable for damages for any such suspension, provided that at least thirty days' notice shall be given to said party of the second part of any such suspension being required; and that a reasonable extension of time shall be given to the said party of the second part for the completion of the contract for any detention caused by such such suspension. In testimony whereof, the said company has caused these presents to be signed by their president, and the said party of

the second part has hereunto subscribed his hand the day and year first above written.

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By BYRON KILBOURN, *President.*
(Signed) S. CHAMBERLAIN.

398 This memorandum of agreement, entered into between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, party of the second part, witnesseth: That the party of the first has agreed, and by these present does agree, to and with the party of the second part, that in case the party of the second part fails to complete the railroad of the party of the first part to Kilbourn City by the first day of October, 1857, to the city of La Crosse by the thirty-first day of October, 1858, as stipulated in an agreement made and entered into this day, that no claim for damage shall be made for the non-performance of that portion of the said contract requiring the completion of the said railroad to the points at their respective dates above named, unless the railroad is not completed to Kilbourn City on the first day of November, 1857, and to the city of La Crosse on the thirty-first day of December, A. D. 1858.

And it is further agreed by and between the parties hereto, that in case the party of the first part fails to complete the bridges over the Wisconsin river, at Kilbourn City, by the first day of October next, as stipulated in the agreement hereinbefore mentioned, that no claim for damages shall be made by the party of the second part for the non-performance of that portion of the said contract requiring the completion of the said bridges on the first day of October, unless the said bridge is not completed by the first day of November, 1858.

In witness whereof, the said company have caused these presents to be signed by their president, and the said second party has hereunto subscribed his hand this twentieth day of January, A. D. 1857.

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By BYRON KILBOURN, *President.*
S. CHAMBERLAIN.

*Schedule A A.*

It is mutually agreed by and between the parties to the within contract that instead of a through cut at the dividing ridge, as stated in said contract, the said parties hereby agree to make a tunnel, and the following shall be the prices for the extra work, viz:

| | | |
|---|---|---|
| Excavation of approaches | $2 00 | per cubic y'd. |
| Do. in tunnel | 5 00 | " " " |
| Arching " " | 12 00 | " perch. |
| Haul on stone over two miles | 50 | per " |
| Timber used in work, per lineal foot | 25 | " " |
| Packing | 3 00 | " perch. |
| Sinking shafts | 10 00 | " cubic yard. |

Should there be any work not specified herein, and required to be done, it shall be paid for at a fair price. The tunnel shall be
399 24 feet wide at sub-grade of road, and 22 feet high under the

arch, or of such other dimensions as the engineer of the first party may direct. All hauling to be as per contract.

(Signed) LA CROSSE & MILWAUKEE R. R. CO.,
By EDWIN H. GOODRICH, *Vice-President.*
S. CHAMBERLAIN.

MILWAUKEE, *April* 30, 1857.

*Schedule D.*

ENGINEER'S OFFICE, LA CROSSE & MILWAUKEE R. R. CO.,
*Milwaukee, Oct.* 1, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the western division of the La Crosse and Milwaukee railroad between Portage City and La Crosse from the commencement to the present date:

| | |
|---|---|
| 43 miles of main line completed between Portage City and New Lisbon, $12,000 | 516,000 00 |
| 2¼ miles side track with above, $12,000 | 27,000 00 |
| Grading and masonry, equal to 9½ miles | 96,000 00 |
| Extra work on earth hauled over 500 feet | 41,400 00 |
| Grubbing and clearing 80 miles, at $300 | 24,000 00 |
| Solid rock excavation, 118,250 yds., at $1 00 | 118,250 00 |
| Loose " " 2,400 " " 75 | 1,800 00 |
| Roadway and cattle passes | 11,700 00 |
| Excavations of foundations and timber for same | 6,500 00 |
| Bank wall, 3,500 yds., at $3 | 10,500 00 |
| Tunnel approach excavations, 64,000 yds., at $2 | 128,000 00 |
| Pile bridging | 2,500 00 |
| Tunnel culvert at Kilbourn City | 2,300 00 |
| Ballasting 45¼ miles, at $2,000 | 90,500 00 |
| | $1,076,450 00 |

I hereby certify that the above estimate is correct.
E. W. WOODWARD.

*Schedule* 1.

ENGINEER'S OFFICE, LA CROSSE & MILWAUKEE R. R.,
*Milwaukee, October* 1, 1857.

Estimated cost of work and materials required to complete the La Crosse and Milwaukee railroad to New Lisbon, (that is, from Portage to New Lisbon,) in manner and form as assumed on estimate 400 made this day of work done by S. Chamberlain on the western division:

| | |
|---|---|
| To complete grading and bridging | 15,000 00 |
| " furnish cross-ties necessary | 5,000 00 |
| " complete track laying | 11,000 00 |
| " complete ballasting | 25,500 00 |
| | $56,500 00 |

I hereby certify that the above is correct.
E. W. WOODWARD, *Chief Engineer.*

EXHIBIT No. 10.—*Schedule G.*

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain,* DR.

| 1857. | | | | |
|---|---|---|---|---|
| April | 2. | To invoice rendered.—See paper No. 1 | | 19,538 35 |
| " | 4. | " " " " " 3 | | 320 32 |
| " | 6. | " " " " " 3 | | 2,178 18 |
| June | 10. | " " " " " 4 | | 3,223 97 |
| Sept. | 11. | " " " " " 5 | | 1,810 37 |
| " | 22. | " uncurrent money returned | | 2,061 00 |
| Oct. | 1. | " note No. 272 returned | 10,000 00 | |
| | | Interest | 530 55 | |
| | | | | 10,530 55 |
| " | 1. | " note No. 280 returned | 1,000 00 | |
| | | Interest | 35 00 | |
| | | | | 1,035 00 |
| " | 1. | " note No. 282 returned | 3,934 40 | |
| | | Interest | 137 70 | |
| | | | | 4,072 10 |
| " | 1. | " note No. 288 returned | 13,707 73 | |
| | | Interest | 399 81 | |
| | | | | 14,107 54 |
| " | 1. | " note No. 302 returned | 12,719 60 | |
| | | Interest | 423 98 | |
| | | | | 13,143 58 |
| " | 1. | " note No. 343 returned | 10,000 00 | |
| | | Interest | 250 00 | |
| | | | | 10,250 00 |
| " | 1. | " note No. 344 returned | 8,228 00 | |
| | | Interest | 205 70 | |
| | | | | 8,433 70 |
| " | 1. | " note No. 279 returned | | 9,769 18 |
| " | 1. | " estimate for ballasting 192,542 c. yds., at 40 c. | | 77,016 80 |
| " | 1. | " filling in bank, Beaver Dam | | 20,768 65 |
| | | | | $198,259 29 |

401

| 1857. | | CREDIT. | |
|---|---|---|---|
| April | 2. | By note No. 278 | 9,769 17 |
| " | 2. | " " 279 | 9,769 18 |
| " | 4. | " " 280 | 1,000 00 |
| " | 4. | " " 281 | 1,000 00 |
| " | 4. | " " 282 | 3,934 00 |
| " | 4. | By warrant on treasurer | 320 32 |
| " | 10. | " cash, 215 57, 740 60, 136 11 | 1,092 28 |
| May | 5. | " note No. 288 | 13,707 73 |
| " | 5. | " cash | 726 57 |
| " | 30. | " " | 1,285 06 |
| June | 3. | " note No. 302 | 12,719 60 |
| " | 3. | " draft on Atwood & Co | 1,938 91 |
| " | 30. | " cash | 1,571 20 |

| | | | | |
|---|---|---|---|---|
| July | 10. | By note No. 343 | 10,000 00 | |
| " | 10. | " " 344 | 8,288 00 | |
| " | 31. | " cash, 545 72 and 7 00 | 552 72 | |
| Aug't | 31. | " " | 795 03 | |
| Sept. | 8. | " " | 200 00 | |
| " | 10. | " " | 13 75 | |
| " | 24. | " warrant on treasurer | 4,500 00 | |
| Oct. | 1. | By balance Chamberlain & Alden | 4,768 65 | |
| | | | | 87,892 57 |
| | | | | $110,396 72 |

*La Crosse and Milwaukee Railroad Company to S. Chamberlain*, Dr.

| | | |
|---|---|---|
| | For constructing 43 miles main line between Portage City and New Lisbon | 516,000 00 |
| | For constructing 2¼ miles side track | 27,000 00 |
| | " " grading, and masonry for 9½ miles | 96,000 00 |
| | " extra on earth hauled, over 500 feet | 41,400 00 |
| | " grubbing and clearing 80 miles, 300 00 | 23,000 00 |
| | " solid rock excavation, 118,250 yds., 1 00 | 118,250 00 |
| | " loose " " 2,400 " 75 c | 1,800 00 |
| | " roadway and cattle passes | 11,700 00 |
| | " excavations of foundations and timber for same | 6,500 00 |
| | " bank wall, 3,500 yds, at 3 00 | 10,500 00 |
| | " tunnel approach excavation, 64,000 yds., at 2 00 | 128,000 00 |
| | " pile bridging | 2,500 00 |
| | " tunnel culvert at Kilbourn City | 2,300 00 |
| 402 | For ballasting 45¼ miles, at 2,000 00 per mile | 90,500 00 |
| | | $1,076,450 00 |

| 1857. | | CREDIT. | |
|---|---|---|---|
| March | 9. | By draft on Atwood & Co | 18,000 00 |
| " | 9. | " " " | 19,530 00 |
| " | 19. | " " " | 15,000 00 |
| " | 19. | " " " | 5,000 00 |
| April | 2. | " currency | 6,184 00 |
| " | 4. | " draft on Atwood & Co | 25,000 00 |
| " | 4. | " " " | 18,856 00 |
| " | 4. | " " " | 10,000 00 |
| May | 5. | " " " | 40,000 00 |
| " | 5. | " " " | 30,605 00 |
| " | 29. | " " " | 10,000 00 |
| June | 2. | " " " | 10,000 00 |
| " | 2. | " " " | 10,000 00 |
| " | 2. | " " " | 8,000 00 |
| " | 2. | " " " | 20,000 00 |
| " | 2. | " " " | 67,470 00 |
| July | 7. | " warrant on treasurer | 6,000 00 |
| " | 7. | " currency | 14,000 00 |
| " | 11. | " draft on Atwood & Co | 15,000 00 |
| " | 13. | " currency | 5,000 00 |
| " | 15. | " " | 5,000 00 |
| " | 18. | " currency | 6,933 00 |
| " | 24. | " draft on Atwood & Co | 5,000 00 |

| | | | | | |
|---|---|---|---|---|---|
| July | 24. | By warrant on treasurer | | 5,000 00 | |
| " | 24. | " " " " | | 5,000 00 | |
| Aug't | 1. | " currency | | 8,000 00 | |
| " | 7. | " draft on Atwood & Co | | 5,000 00 | |
| " | 7. | " currency | | 10,000 00 | |
| " | 8. | " do. | | 10,000 00 | |
| " | 13. | " do. | | 15,000 00 | |
| " | 22. | " my note given up | | 10,000 00 | |
| " | 22. | " currency | | 7,500 00 | |
| Sept. | 3. | " draft on Bank Republic | | 10,000 00 | |
| " | 4. | " do. do. | 5,000, 5,000 | 10,000 00 | |
| " | 15. | " do. do. | | 5,000 00 | |
| " | 16. | " note, $456 | | 149 00 | |
| Oct. | 1. | " my 3 notes, $10,000 each, given up | | 30,000 00 | |
| 403 | | By amount deducted from estimate as being sum required to complete road to New Lisbon | | 56,500 00 | |
| | | | | | 557,727 00 |
| | | | | | $518,723 00 |
| | | | | | 110,366 72 |
| | | | | | $629,089,72 |

Paper No. 1.

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

| | | | |
|---|---|---|---|
| 1856. | | | |
| Dec. | 15. | For my two notes of this date payable in 3 mos. and 6 mos., $5,500 each, for 208 wheel gravel cars, *a* 550 | 11,000 00 |
| 1857. | | | |
| Jan'y | 8. | For my 3 notes to Wasson & Co. for 10 gravel cars. | 6,497 40 |
| " | 8. | For interest on $5,500 to Aug. 1, 4½ mos | 219 38 |
| " | 8. | For interest on $5,500 " 1½ mos | 74 25 |
| " | 8. | " do. $6,497 40 " 2⅔ mos | 149 80 |
| " | 8. | " freight on 20 cars from Hudson to Cleveland | 46 80 |
| " | 8. | " freight on 20 cars from Cleveland to Toledo | 201 60 |
| " | 8. | " freight on 20 cars from Toledo to Chicago | 320 00 |
| " | 8. | " this amount for oiling do | 22 88 |
| " | 8. | " J. A. Taylor for hauling cars, $50 and $30 | 80 00 |
| " | 8. | " freight from Chicago to Milwaukee | 200 00 |
| " | 8. | " Galena and Chicago Union R. R. Co | 40 00 |
| " | 8. | " freight 10 cars from Cleveland to Chicago | 296 80 |
| " | 8. | " freight 10 cars from Chicago to Milwaukee | 100 00 |
| " | 8. | " Galena and Chicago Union R. R. Co | 50 00 |
| " | 8. | " paid John Miller for hauling 30 cars | 123 00 |
| " | 8. | " E. Garfield expenses for cars | 66 44 |
| " | 8. | " Q. " 20 days' time | 50 00 |
| | | | $19,538 35 |

Paper No. 2.

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

| | | | |
|---|---|---|---|
| 1856. | | | |
| Dec'r. | To cost of opening gravel pit and grading for side track to same— | | |
| | " 2 days, R. Merrill, 2 00; 10½ by T. Shields, 9½..... | | $47 81 |
| | " 12 do. A. Meheme, 1 00; 11¾ by M. McCarty, 8½.... | | 23 75 |
| 404 | " 9½ do. to Con. Murphy, 1 00; 3½ by Pat Griffin, 8½.. | | 13 00 |
| | " 2 do. M. Grunewal; 5½ by M. Holland, 8..... | | 8 50 |
| | " 8 do. M. Murphy, 1 00; 8¾ by Jas. Owens, 8½..... | | 16 75 |
| | " 10 do. J. O. Muley, 1 00; 9¾ by Pat Sullivan, 8½.... | | 19 75 |
| | " 8 do. Jno. Moran, 1 00; 2½ Martin Devine, 8½ .... | | 10 50 |
| | " 2½ do. Morris Griffin, 1 00; 8¾ by Bart. Yaughlan, 8½ | | 11 25 |
| | " 5 do. Wm. McGill, 1 00; 7 by Pat Hughes, 1 00.... | | 12 00 |
| | " 5¾ do. Pat Comey; 5 by Dennis Rugan..... | | 10 75 |
| | " 7 do. Fred'k Carter; 6¾ by Arthur Regan, 1 00.... | | 13 75 |
| | " 3½ do. Jas. Gordon; 2 by Stephen Caton, 1 00..... | | 5 50 |
| | " 4 do. Mich'l Kennely; 2 by E. S. Pendergust..... | | 6 00 |
| | " 2 do. Mich'l Kavanagh; 1 by Frank Finnely..... | | 3 00 |
| | " 1 day Geo. Barton; 1 by Jerry Maloney ..... | | 2 00 |
| | " 1 do. Dan'l Maloney; 1 by Chas. Stearns ..... | | 2 00 |
| | " 1 do. Thos. Kennedy; 1 by Edw'd McCarty ..... | | 2 00 |
| | " 1 do. M. Sullivan; 5 by Jacob Straw, 3 00..... | | 16 00 |
| | " 5 do. Oscar Straw, 2 00; 5 P. Hulbut, 1 50..... | | 17 50 |
| | " 4 do. A. B. Bentley, 1 25; 5 by Anth'y Smith..... | | 10 00 |
| | " Dale and team 1½ days, 3 00..... | | 4 50 |
| | " for use of tools..... | | 64 06 |
| | | | $320 32 |

Paper No. 3.

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

| | | |
|---|---|---|
| 1857. | | |
| March. | For cost of blocking up track, putting gravel on under same, and other necessary work to put track in running order between Midland and Portage City— | |
| | " James Rammons and party..... | 66 10 |
| | " Geo. Farrington and party..... | 245 91 |
| | " Jacob Straw and party..... | 371 86 |
| | " Mich'l Morris and party..... | 108 94 |
| | " R. Copeland and party..... | 732 62 |
| | " Wm. G. Rogers and party..... | 652 75 |
| | | $2,178 18 |

405 Paper No. 4, including the eight bills on invoices recapitulated below.

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

1857.

| | | | |
|---|---|---|---|
| June 1. | For recapitulation, viz: | | |
| | " No. 1, putting on chairs, respiking track, &c..... | $207 | 27 |
| | " No. 2, putting on switch, &c, prairie, near Fox lake | 107 | 00 |
| | " " 3, as above, Whitman island..... | 159 | 12 |
| | " " 4, as above, between Portage City and Midland | 90 | 00 |
| | " " 5, as above, Portage City..... | 260 | 87 |
| | " " 6, ties, chairs, and spikes ..... | 2,075 | 90 |
| | " " 7, repairing gravel cars, &c..... | 110 | 81 |
| | " " 8, putting in switch and track, gravel pit, Portage City..... ..... | 213 | 00 |
| | | $3,223 | 97 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

1857.

| | | | |
|---|---|---|---|
| April. | For the following labor, &c.: Respiking and bringing back into gauge, and putting in small chairs and taking out large ditto, between Portage and Pardeeville, Aaron Waterman 10 days, common labor 82 days..... | 48 | 00 |
| May | " Aaron Waterman 2, common labor 6 days..... | 11 | 30 |
| | " 8 kegs spikes, used as above, 800..... | 48 | 00 |
| | " James Tray and four men, as above, 30¼ days..... | 40 | 84 |
| | " 178 kegs spikes ..... | 10 | 68 |
| | " James Tray and three men, 1¼ days on canal bridge to let steamboat through, per order Leathe, engineer. | 7 | 00 |
| | | 165 | 82 |
| | Add 25 per cent. for tools and superintendence..... | 41 | 45 |
| | | $207 | 27 |

406

*La Crosse and Milwaukee Railroad Company to S. Chamberlain*, Dr.

1857.

| | | | |
|---|---|---|---|
| April. | To expenses putting in frog and switch and side track, Fox lake, viz: | | |
| " | " Charles Alber, 2 days..... | 6 | 00 |
| " | " Cunningham and Bracey, 4 days each..... | 16 | 00 |
| " | " 24 days common labor ..... | 26 | 40 |
| " 20. | " 6 men, 1 day, extending do..... | 7 | 20 |
| May 15. | " Cunningham and Bracey, 4 00, and 6 men 1 day moving frog and switch, 7 20..... | 11 | 20 |
| " 15. | " 7½ days taking up frog and switch near Beaver Dam. | 10 | 00 |
| " 16. | " Cunningham and Bracey, 4 00; 4 men 1 day taking up track, 4 80 do ..... | 8 | 80 |
| | | 85 | 60 |
| | Add 25 per cent. for tools, &c..... | 21 | 40 |
| | | 107 | 00 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

For the following expenses: Putting in frog and switch and side track on Whitman's island:

| 1857. | | | |
|---|---|---|---|
| March 11. | To | Rogers and 4 men, ½ day | $5 20 |
| " 30. | " | " 4 " 1 " | 10 40 |
| " 31. | " | " 4 " 1 " | 10 40 |
| April 4. | " | " 3 " 1 " | 9 30 |
| " 4. | " | Cunningham and Bracey, 3 days each | 8 00 |
| " 4. | " | Dodge and 6 men, 3 days each | 15 60 |
| " 4. | " | Cunningham and Bracey, 4 days in M'ch. (The above for gravel pit north side of main track.) | 16 00 |
| May 1 to 9. | " | Cunningham and Bracey and 2 men, 5 days, frog and switch south side of main track | 32 00 |
| " " | " | Bracey 6 00, and 4 men 3 days extending track, 14 40 | 20 40 |
| | | | 127 30 |
| | | Add 25 per cent. for use tools and superintendence | 31 82 |
| | | | $159 12 |

407 *La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

1857. For expenses putting in frog and switch between Pardeeville and Portage City:

| | | | |
|---|---|---|---|
| April. | " | C. Alber, 4 days | $12 00 |
| " | " | Cunningham and Bracey, 4 days each | 16 00 |
| | | Common labor, 16 days | 17 60 |
| May 2. | " | Cunningham and Bracey, 4 00, and 4 men 1 day, 4 80 | 8 80 |
| " 4 & 5. | " | Cunningham and Bracey and 4 men, 2 days | 17 60 |
| | | | 72 00 |
| | | Add 25 per cent. for tools and superintendence | 18 00 |
| | | | $90 00 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

For the following expenses taking up side track at the Portage City gravel pit, and putting in frog and switch and laying side track south of depot:

| 1857. | | | |
|---|---|---|---|
| May 18-24. | For | Cunningham and Bracey, 20 00, and 18 men 6 days, 129 60, taking up track and straightening iron | $153 60 |
| | | Cunningham and Bracey, 20 00, and 5 men 5 days each, putting in switch and laying side track south of depot; (was hindered by trains standing on track.) | 50 00 |
| May 21. | For | 4 men, ½ day, repairing engine-house track, Portage City | 2 40 |
| " 22. | " | 2 men, ½ day, putting in cattle guards, order of Leathe, engineer | 1 20 |
| " 23. | " | 3 men, ¼ day, repairing engine-house track | 90 |
| " 28. | " | 2 men, ¼ day, repairing turntable | 60 |
| | | | 208 70 |
| | | Add 25 per cent. for tools and superintendence | 52 17 |
| | | | $260 87 |

408 *La Crosse and Milwaukee Railroad Company to Selah Chamberlain.* Dr.

**For the following chairs and spikes and ties in gravel pit on La Crosse and Milwaukee railroad:**

| Ties. | Chairs. | Spikes. | | |
|---|---|---|---|---|
| 86 | 22 | 388 | Pardeeville switch, from main track to turntable. | |
| 56 | 20 | 264 | Do., turntable into engine house. | |
| ---- | 6 | 160 | Do., turntable. | |
| 16 | ---- | ---- | Do., support going off turntable. | |
| 33 | 32 | 300 | Portage City engine house. | |
| 32 | 8 | 144 | Do., side track off turntable. | |
| 236 | 73 | 709 | Do., temporary side track, south depot, Portage City. | |
| 620 | 170 | 2,990 | Do , gravel pits. | |
| 580 | 150 | 2,910 | Gravel pit between Portage City and Midland. | |
| 561 | 156 | 2,968 | Gravel on Whitman's island, north side. | |
| 154 | 47 | 729 | Gravel on Whitman's island, south side. | |
| 140 | 40 | 1,100 | Fox Lake gravel pit in prairie. | |
| 225 | 138 | 2,754 | Fox Lake piling. | |
| 256 | ---- | ---- | Fox Lake distributed for side track. | |
| 70 | 14 | 300 | Canal bridge near Portage City. | |
| ---- | ---- | 300 | 1 keg taken by Hansley from Beaver Dam Station. | |
| 180 | 74 | 200 | Side track near Beaver Dam. | |
| ---- | ---- | 16,116 | Spikes, ½ pound each, 8,058, at 5 cents | $402 90 |
| ---- | 1,000 | ---- | Chairs, at 3½ cents each | 375 00 |
| 3,245 | ---- | ---- | Ties, at 40 cents each | 1,298 00 |
| | | | | 2,075 90 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain,* Dr.

1857.

| | | | | |
|---|---|---|---|---|
| March | 11. | For | Rogers and four men one-half day putting in side sticks for culvert, Luke Robert | $3 90 |
| " | 19. | " | Rogers and twenty men one-half day work on track, passenger train off track and engine taken to haul train to Fox lake | 12 50 |
| " | 25. | " | two men one-half day getting freight cars on track for Kelly | 1 20 |
| " | 26. | " | five men one-half day repairing culvert between Midland and Portage City | 3 00 |
| " | 30. | " | one man three days wheeling sand into engine house, Midland | 3 00 |
| Feb'y | 12. | " | For this amount paid for mending coupling link | 38 |
| " | 19. | " | this amount paid for wood work on cars | 1 00 |
| March | 11. | " | coupling-iron on engine repaired | 1 00 |
| " | 21. | " | mending hook on engine | 50 |
| " | 26. | " | " draft iron | 1 00 |
| May. | | " | Yale's bill for 1,491 foot lumber for side-boards to cars | 26 83 |
| " | | " | Smith and Blair, twelve roller-stands for gravel cars, 502 lb. at 5c | 25 10 |
| " | | " | drilling and putting screws in same | 8 64 |
| | | | | $88 65 |
| | | | Add 25 per cent | 22 16 |
| | | | | $110 81 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

1857.

For laying side track, putting on switches, &c., Portage City gravel pit:

| | | | | | |
|---|---|---|---|---|---|
| April. | " | John Seymour | 9 days, $3 00 | | 27 00 |
| " | " | James Marmehan | 4 days, 1 00 | | 4 00 |
| " | " | Michael Calligan | 4 " " | | 4 00 |
| " | " | John Convey | 6 " " | | 6 00 |
| " | " | Patrick McCarty | 4 " " | | 4 00 |
| " | " | Patrick Sullivan | 2½ " " | | 2 50 |
| " | " | Cormick Cummings | 4 " " | | 4 00 |
| " | " | Martin Ryan | 3½ " " | | 3 50 |
| " | " | Nichol Doyle | 3 " " | | 3 00 |
| " | " | Albert Sargent | 2½ " " | | 2 50 |
| " | " | Alexander Ogden | 9 " 50 | | 4 50 |
| " | " | Danl. Cunningham | 3½ " 2 00 | | 7 00 |
| " | " | R N. Copeland | 1 Sunday | | 3 00 |
| " | " | George B. Tripp | 1 Sunday | | 3 00 |
| " | " | S. H. Bailey | 1 Sunday | | 3 00 |
| 410 | " | James May | 1 Sunday | | 2 25 |
| " | " | common labor | 24 Sundays | | 26 40 |
| " | " | Jacob Straw | 3 days | | 7 50 |
| " | " | common labor | 18 " | | 18 00 |
| " | " | Lyman & Cunningham, 3 days each and 22 days common labor | | | 34 00 |
| | | | | | 170 40 |
| | | Add 25 per cent., use of tools and superintendence | | | 42 60 |
| | | | | | $213 00 |

**Paper No. 5, includes the right bills following the recapitulation below.**

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

For recapitulation:

| | | | |
|---|---|---|---|
| April. | " | blacksmith account | $10 75 |
| May. | " | repairing bridges, &c | 135 25 |
| April & May. | " | blacksmith | 79 13 |
| June. | " | " | 265 44 |
| July. | " | " | 279 36 |
| | " | labor, &c., canal bridge | 107 67 |
| | " | " Portage prairie | 373 69 |
| | | Bill detentions | 559 08 |
| | | | $1,810 37 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain*, Dr.

1857.

| | | | |
|---|---|---|---|
| April 30. | For repairing coupling bunter | | $3 00 |
| " | " " links | | 50 |
| " | " shackle bar | | 1 50 |

| | | | |
|---|---|---|---|
| April 30. | For 4 bolts for brake, 75c.; repairing switch, 1 50 | | 2 25 |
| May 18. | " " coupling | | 3 00 |
| | | | $10 75 |

411 *La Crosse and Milwaukee Railroad Company to Selah Chamberlain,* Dr.

| | | | |
|---|---|---|---|
| May 6. | For 17½ days moving switch, Fox Lake gravel pit | | 21 00 |
| 8. | " Bailey and 10 men 1 day repairing canal bridge | | 15 00 |
| 18. | " Bailey and 8 men 1 day repairing Fox river bridge | | 12 60 |
| 16. | " Rogers and 17 men ½ day, to Fox Lake fund | | 11 70 |
| 20. | " Farrington and 24 men, ¾ getting cars on track when freight run off track at Fox Lake piling | | 23 85 |
| 22. | " putting in crossing at Chesstreets | | 2 00 |
| 24. | " Rogers and 22 men, to Fox Lake after wood, ¾ day | | 22 05 |
| | Add 25 per cent. for tools, &c | | 27 05 |
| | | | $135 25 |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain,* Dr.

| | | | |
|---|---|---|---|
| April 20. | For repairing dump car, 3 00; hook on switch rope, 1 50 | | 4 50 |
| 28. | " repairing brake, 1 00; repairing brake on flat car, 75c | | 1 75 |
| 29. | " repairing bunter strap and colt | | 75 |
| | " 3 chock blocks, dump car | | 1 00 |
| | " repairing latch on dump car | | 75 |
| 30. | " " bunter on " " | | 1 75 |
| May 1. | " " 2 doors on dump car | | 2 50 |
| | " 4 switch bolts for stand | | 1 00 |
| | " mending brake on flat car | | 50 |
| 2. | " section 15, repairing bar | | 75 |
| 4. | " repairing bunter bolts and plate on flat car | | 1 00 |
| 6. | " 1 spring colt on frog | | 75 |
| | " frog bolts | | 60 |
| | " mending guard rail | | 50 |
| 7. | " section 15, sharpening chisels | | 25 |
| | " mending spring-hanger, engine No. 11 | | 1 00 |
| | " 6 mending coupling links | | 60 |
| | " mending chair, engine No. 11 | | 13 |
| | " hanging door on dump car | | 50 |
| 11. | " chock blocks, 75c.; repairing bunter, 1 00 | | 1 75 |
| | " repairing bar, section 15 | | 75 |
| 412 12. | " engine No. 11, straightening strap | | 25 |
| 14. | " straightening and mending bunter | | 3 00 |
| | " 4 bolts do., 2 50; mending coupling pin, 50c | | 3 00 |
| 16. | " mending bunter, 1 25; welding coupling, 25c | | 1 50 |
| 18. | " 4 new bolts, and repairing wood work | | 3 00 |
| | " 3 new brake heads on cars, and chains, hooks, and bolt | | 1 50 |
| 19. | " sharpening chisel for sec. 15 | | 25 |
| | " repairing bunter irons, 4 75; 1 bolt, and repairing brake, 50c | | 5 25 |
| 20. | " 1 eye bolt on brake stand | | 25 |
| | " 19 lbs. coupling link and mending | | 2 15 |

| | | | |
|---|---|---|---|
| May 21. | For | 40 lbs. iron on car, strap, and plates | 4 80 |
| | " | repairing 4 bolts, 1 00; mending bunter, 1 00 | 2 00 |
| | " | mending brake, 75c; 228 bolts, 1 00 | 1 75 |
| 22. | " | shortening 4 new hooks, and bolts, and brake | 1 25 |
| | " | taking off and bending 4 levers | 1 00 |
| | " | 4 new nuts, 25c.; 4 new bolts, 50c | 75 |
| 23. | " | putting on brake, 50c.; welding 3 links, 75c | 1 25 |
| | " | 2 new pins, 1 00; 2 straps on stake iron, 75c | 1 75 |
| 25. | " | 2 bolts on bunter, 50c.; long rod on brake, 50c | 1 00 |
| 26. | " | mending bunter and 1 pin, 50c.; cutting and mending brake, 1 25 | 1 75 |
| 27. | " | brake, S hook, and bolt, 50c.; repairing bunter, 3 00 | 3 50 |
| 28. | " | 1 bolt in bunter, 20c.; shortening brake, 25c | 45 |
| | " | shifting 2 brakes on cars | 3 00 |
| 29. | " | repairing bunter, 1 00; repairing hand-car, 50c | 1 50 |
| | " | taking off bunter and repairing two bolts | 2 00 |
| | " | shifting brake | 1 00 |
| | " | repairing spring hang on engine No. 11 | 1 00 |
| | " | 26 repairing plate and bolt | 2 6 |
| 30. | " | shortening brake, new chain and eye | 1 5 |
| | " | 2 bolts, staple, and plate for bunter | 2 0 |
| | | | $79 1 |

*La Crosse and Milwaukee Railroad Co. to S. Chamberlain,* Dr.

1857.

| | | | |
|---|---|---|---|
| June 1. | To | 1 colt on brake, 20c.; shifting brake on flat, 1 50 | $1 70 |
| | " | 4 coupling pins, 1 50; 9 staples, 90c | 2 40 |
| | " | 1 brake bar and repairing do., 1 00; splicing draw bar, 10 00 | 11 00 |
| 413 | " | repairing door and 3 catches, 4 00; putting on roller stand | 6 00 |
| | " | repairing brake, 1 00; 4 new chock blocks, 2 75 | 3 75 |
| | " | repairing 2 chock blocks on beam, 1 50; repairing bolts and iron, 4 00 | 5 50 |
| | " | 2 coupling pins and links, 1 25; 2 rods and 3 bolts, 75c | 2 00 |
| 8. | " | 4 new log mill, &c.; repairing brake-rod on flat, 15c. | 15 |
| 9. | " | new storup and bolt, 75c.; new brake, with rods, &c., 4 00 | 4 75 |
| | " | repairing bolts, rocker, and iron work, 2 00; cross beam on dump, 2 00 | 4 00 |
| | " | new centre stay, 50c.; 2 dump blocks, 50c | 1 00 |
| June 1. | " | 2 hasps and staples, dump cars, 50c.; repairing brake and stand, 1 00 | 1 50 |
| | " | 1 bolt on dump car, 25c.; repairing brakes on flat | 45 |
| | " | repairing bumper, 25c.; brake stand and 2 bolts, 1 00 | 1 25 |
| 10. | " | coupling piece and chain, 75c.; repairing brake on flat car, 25c | 1 00 |
| | " | repairing brake, 25c.; repairing keying on wheel, 50c | 75 |
| | " | 2 new church on draw bearer; 2 do. on centre beam | 5 00 |

| | | | |
|---|---|---|---|
| June 22. | To 2 coupling pins and chains, 1 50; repairing doors and brake stands, 1 00 | | 2 50 |
| | " hasp and staple for dump, 25c.; straightening draw 16, 50c | | 75 |
| 12. | " 4 large nuts for engine No. 16, 50c.; repairing bunter, 50c | | 1 00 |
| | " repairing bunter dump, 50c.; coupling pin and broken stand, 50c | | 1 00 |
| 13. | " 2 coupling pieces and chains, 75c.; repairing bunter flat, 75c | | 1 50 |
| | " repairing brake and stand-flat car, 50c.; repairing brake, 25c | | 75 |
| | " bunter on flat car, 2 50; repairing stirrup, iron bolts, &c., 1 25 | | 3 75 |
| | " jacking up car and packing, 2 50; 2 blocks on centre, 1 50 | | 4 00 |
| 15. | " 2 block draw-bar, 1 50; 2 new boxes on boxes, 50c. | | 2 00 |
| | " repairing bolt and nut, 15c.; 3 coupling pins | | 1 65 |
| 17. | " repairing 2 bunters on flat car, with 9 new bolts and stirrup | | 6 00 |
| | " repairing 2 brakes on flat, 1 00; 3 new coupling pins, 1 50 | | 2 50 |
| 414 | " repairing 2 brakes, jacking up car, and replacing springs on dump | | 1 00 |
| | " 2 new latches on car door, 75c.; repairing dump door, 2 50 | | 3 25 |
| 19. | " 2 bolts and bunters, flat car, 2 50; 3 coupling-pins, 1 13 | | 3 63 |
| | " new corner stay for dump, 50c.; latch on dump, 38c. | | 88 |
| 20. | " repairing truck frame with new bolts, 3 00; 2 coupling pins, 75c | | 3 75 |
| | " 2 dump blocks, 2 00; 3 coupling pins, 1 12 | | 3 12 |
| | " 2 dump blocks, 2 00; repairing brake with new, 1 25 | | 3 25 |
| | " repairing bunter on dump car, 2 00; brake on flat, 50c | | 2 50 |
| 23. | " repairing bunter on flat car, 1 00; repairing rod and chain, 1 50 | | 2 50 |
| | " 3 coupling-pins, 1 12; 13 link coupling, 1 00 | | 2 12 |
| | " 3 new cast-iron caps, and putting on | | 50 |
| | " 4 chock blocks for dump cars, 1 00; 29, repairing dump block | | 1 25 |
| | " 6 days by R. A. Brownson, repairing wood work on cars | | 12 00 |
| 30. | " repairing tracks and putting under cars, 6 00; bolts on dumps, 25c | | 6 25 |
| | " putting on castings, 1 00; putting on rods, 75c | | 1 75 |
| 31. | " repairing door dump car, 75c.; repairing bunter, 50c. | | 1 25 |
| | " repairing bunter, 50c.; bolt on stirrup, 75c | | 1 25 |
| | " sharpening chisels for Robinson Liesman | | 1 00 |
| 20. | " this amount paid Smith & Blear for roller stands, 317, a 5c | | 15 86 |
| June 20. | " this amount paid for 12 half boxes, 22c | | 1 10 |
| | " this amount paid for drilling and putting set screws on same | | 5 76 |
| | " this amount paid for 9 pieces bump iron, 2 73 | | 13 65 |

| | | |
|---|---|---|
| June 20. | To this amount paid for 5 roller stands, 1 98; drilling and setting, 3 60 | 13 50 |
| | " this amount paid for 3 roller stands, 1 59 | 5 95 |
| | " this amount paid for drilling and setting on same | 2 16 |
| | " 4 days wheeling and grading turntable, Portage City | 5 00 |
| | " 2 men as above | 5 00 |
| 25 & 26. | To 16 days' labor, grading, &c., depot grounds | 20 00 |
| | " 4 men, ½ days to Midland for wood | 2 50 |
| | " 12 wheelbarrows, per order W. Kithridge | 36 00 |
| | Add 25 per cent. on labor | 8 12 5 |
| | | $265 44 45 |

415 *La Crosse and Milwaukee Railroad Co. to Selah Chamberlain,* Dr.

1857.

| | | |
|---|---|---|
| July 2. | To 1 new bunter and bolts, 5 00; 4 bolts for stump, 1 00 | 6 0 |
| | " 2 dump blocks, 75c.; 3d, repairing plate engine No. 11, 12c | 8' |
| 3. | " repairing bunter flat car, 2 00; repairing 3 brake chains, 75c | 2 7 |
| | " 2 dump blocks, 75c.; 4 check blocks, 2 00 | 2 75 |
| | " raising bed piece and bolts, 1 50; making key bunter, 10c | 1 60 |
| 6. | " 2 dump blocks and fastening brake, 1 25; mending brake, 60c | 1 75 |
| | " repairing draw bar, 1 00; 4 chock blocks, 2 00 | 3 00 |
| | " gripe on casting for dumper, 75c.; new bench for dumper, 1 00 | 1 75 |
| 7. | " putting on track dump 2 00; repairing doors and bolts, 75c | 2 75 |
| | " 10 bolts, 3 00; 4 bolts on bunter, 1 00 | 4 00 |
| | " repairing bunter on flat, 1 00; 1 eye and bolt, 1 00 | 2 00 |
| | " raising door on dumper, 1 25; 8th, 4 bolts on dumper, 1 50 | 2 75 |
| 8. | " raising bunter on flat, 2 00; repairing stirrup on flat, 2 00 | 4 00 |
| 9. | " 2 latches, 1 75; 6 sets for flat car, 2 00 | 3 75 |
| | " 1 stirrup and bolt for flat, 1 25; 1 new draw bar, 3 00 | 4 25 |
| | " repairing 3 coupling pins, 75c.; repairing coupling link, 25c | 1 00 |
| | " 4 bolts for dump, 1 00; 4 chock blocks dump, 1 00 | 2 00 |
| 10. | " 1 door post and repairing door on dump car, | 2 50 |
| | " putting on new castings and bolts | 1 00 |
| | " repairing brake chain and rod | 50 |
| | " 2 dump blocks, 75c.; 1 check block for dump, 25c | 1 00 |
| | " 4 bolts for dump car, 1 00; 11th, repairing bunker dump, 2 20 | 3 20 |
| 11. | " repairing brake on dumper, 2 00; repairing truck frame, 50c | 2 50 |
| | " repairing door on dumper, 75c.; 15th, draw-bar engine, 3 50 | 1 25 |
| 13. | " 1 stirrup for dump car, 1 00; coupling pins, 25c | 1 25 |

| | | | |
|---|---|---|---|
| | | To repairing door dump, 50c; 2 door posts on dump car, 1 50 | 2 00 |
| July | 13. | " repairing brake on flat, 50c.; repairing brake on dump, 1 00 | 1 50 |
| 416 | 14. | " 1 catch dumper, 1 00; 1 dog for brake, 50c | 1 50 |
| | | " iron for Portage prairie switch | 2 50 |
| | | " 3 coupling pins for flat, 2 50; repairing brake chain, 37c | 2 87 |
| | | " 2 bolts for dumper, 50c.; 15th, repairing bunter flat, 3 00 | 3 50 |
| | 15. | " 1 catch dumper, 25c.; 2 bolts for dumper, 1 00 | 1 25 |
| | 16. | " 14 staples for flat, 1 75; 1 catch for dumper, 1 00 | 2 75 |
| | | " repairing doors on dump, 1 00; 17th, 1 stirrup for flat, 1 50 | 2 50 |
| | 17. | " bolts in dumper for bunter, 50c.; 2 straps for bunter, 1 50 | 2 00 |
| | | " 6 bolts for flat, 1 50; repairing draw bar flat, 4 00 | 5 50 |
| | | " 4 bolts in bunter dump, 1 50; 20th, draw bar dump, 8 00 | 9 50 |
| | 20. | " 4 bolts in bunter dump, 1 50; bunter flat car, 1 50 | 3 09 |
| | 21. | " repairing draw bar, 4 00; 2 straps and 6 bolts, 3 00. | 7 00 |
| | | " stirrup for flat, 50c.; 22d, 8 bolts for dump car, 2 00. | 2 50 |
| | 22. | " 2 plates for draw bar, 75c.; repairing draw bar dump car, 8 00 | 8 75 |
| | | " repairing 3 doors, 1 00; 23d, stirrup, and bolts, and flat, 1 00 | 2 00 |
| | 23. | " brake rod and brake for hand car section man | 75 |
| | | " 2 straps and 4 bolts on draw bar dumper car | 1 50 |
| | | " repairing draw bar dumper car, 8 00; repairing brake, 25c | 8 25 |
| | 24. | " 2 straps for bunter car, 1 50; 6 bolts for bunter flat, 1 50 | 3 00 |
| June | 27. | " repairing bunter on flat, 4 00; 2 bolts door bumper, 50c | 4 50 |
| | | " repairing door bumper car, 75c.; 4 dead wood flat, 1 25 | 2 00 |
| | | " repairing stirrup flat car, 25c.; repairing chain flat, 50c | 75 |
| | | " 1 brake strap, 1 25; putting on 3 castings, 1 00 | 2 25 |
| | 25. | " repairing brake flat, 50c.; 6 bolts for dumper, 1 50. | 2 00 |
| | | " repairing brake engine No. 11, 50c.; repairing 2 brakes, 3 00 | 3 50 |
| | | " 4 chock blocks, 1 00; 10 bolts for do., 2 50 | 3 50 |
| | | " new draw bar, 8 00; repairing 3 doors dump, 1 00. | 9 00 |
| | 27. | " brake lever and rod, 2 00; 2 latches for dumper, 1 00. | 3 00 |
| | | " 1 catch for dump, 50c.; 4 bolts, 75c. | 1 25 |
| | | " repairing 2 track frames, 2 50; repairing 1 do. flat, 1 00 | 3 50 |
| | | " repairing rocker 2 dumps, 1 00; repairing brakes 4 dumps, 4 50 | 5 50 |
| | | " 2 dump blocks, 75c.; 28th, 3 doors on dump, 1 50 | 2 25 |
| | 28. | " 1 dump and repairing fastings, 1 00; repairing brake on dump, 10c | 1 10 |
| | | " repairing floor on dump, 1 00; 11 bolts for dump, 1 50. | 2 50 |
| | | " repairing stirrup on flat, 37c.; 1 door catch dump, 50c. | 87 |
| | | " 1 catch, 50c.; 1 coupling pin, 50c.; 1 long coupling, 1 50; 4 bolts | 3 25 |

| | | | |
|---|---|---|---|
| 417 | 29. | To 1 draw bar for dump, 8 00; repairing doors, 50c.... | 8 50 |
| | | " repairing brake on dumper, 75c.; 2 brake rods, flat, 1 00..... | 1 75 |
| | | " repairing bunter on flats, 1 25; 7 bolts for dump, 1 50. | 2 75 |
| | | " repairing braces on dump, 50c.; 3 bolts for dump, 38c. | 88 |
| | 30. | " repairing 3 coupling pins, 1 50; repairing brake flat. | 2 00 |
| | | " 10 bolts, dump, 1 88; 2 plates, dump, 63c..... | 2 51 |
| | | " repairing brake on flat, 50c.; repairing cans to spring, 1 50..... | 2 00 |
| | | " repairing 3 doors on flat, 1 00; 31st, draw bar on head block, 11 00..... | 12 00 |
| | 31. | " putting catch on dumper, 10c.; 2 bolts for dumper, 10c.; 2 bolts for dumper, 63c..... | 75 |
| | | " catch for dumper, 50c.; coupling shonghair, 2 00... | 2 50 |
| | | " brake chain for No. 11, 50c.; 4 bolts for dump, 75c. | 1 20 |
| | | " ironing dump blocks..... | 50 |
| | | For amount paid J. D. Wheelock for 1,440 feet timber.. | 28 80 |
| | | " amount paid Smith & Blair roller stands, 54c..... | 4 90 |
| | | " amount paid Smith & Blair 24 roller stands, 2 83... | 14 [illegible] |
| | | " coning and drilling same..... | 9 [illegible] |
| | | | $279 5[illegible] |

*La Crosse and Milwaukee Railroad Company to Selah Chamberlain,* DR.

| | |
|---|---|
| For labor and materials on canal bridge : | |
| C. L. Steward 1½ days, 3 00..... | $4 50 |
| R. N. Copeland 1½ days, 3 00..... | 4 50 |
| E. N. Beers 1½ days, 2 00..... | 3 00 |
| Common labor 12½ days, 10..... | 15 62 |
| 21 ties at 40c..... | 8 00 |
| 24 chairs..... | 9 00 |
| 300 spikes..... | 15 00 |
| 4 p's 12 by 12 timber, 64 feet, at 20c..... | 12 80 |
| 20 plank, 147 feet, at 18 00 per m..... | 25 46 |
| Add 25 per cent. on 37 62 for tools, &c..... | 9 40 |
| | $107 68 |

418 *La Crosse and Milwaukee Railroad Company to Selah Chamberlain,* DR.

| | |
|---|---|
| For labor and materials on side track, Portage prairie: | |
| S. H. Bailey, 7 days ..... | 21 00 |
| Common labor, 79 days, 10..... | 98 75 |
| 350 ties, 40c..... | 140 00 |
| 82 chairs, 3..... | 31 50 |
| 7 kegs spikes, 10 50, at 5..... | 52 50 |
| Add 25 per cent. on 119 75 for tools and superintendence ..... | 29 94 |
| | $373 69 |

*La Crosse and Milwaukie Railroad Co. to Selah Chamberlain,* Dr.

| | | | |
|---|---|---|---|
| 1857. | | For the following detentions to gravel trains and men: | |
| March | 12. | For Ru. Copeland and 11 men 1½ hs. bailing water .... | 2 00 |
| | 13. | " Ru. Copeland and 12 men 2 hs. bailing water ..... | 2 40 |
| | 13. | " Ru. Copeland and 12 men 1 hr. bailing water ..... | 1 20 |
| | 14. | " Ru. Copeland and 12 men 1 hr. bailing water ..... | 1 20 |
| | 15. | " Ru. Copeland and 12 men 1 hr. for bailing water .. | 1 20 |
| | 16. | " Ru. Copeland and 12 men 1 hr. for bailing water .. | 1 20 |
| | 19. | " Ru. Copeland and 44 men detained ½ day, engine away to assist passenger train ..... | 23 50 |
| | 19. | " Farrington and 4 men 1 hour bailing water..... | 3 50 |
| | 20. | " Copeland and 47 men detained 1 hour, engine pumping up passenger engine..... | 5 00 |
| | 20. | " Farrington and 4 men detained as above..... | 1 00 |
| | 21. | " Copeland and 47 men detained 1 hour, engine switching Portage City yard..... | 5 00 |
| | 21. | " Farrington and 4 men ditto, as above ..... | 1 00 |
| | 25. | " Rogers and 25 men detained 4 hours by freight train | 9 33 |
| pril | 1. | " Ranors and 32 men detained ½ hour by freight train | 3 50 |
| | 6. | " Ranors and 32 men detained 1¾ hours by freight train | 4 37 |
| | 7. | " Ranors and 32 men detained 2¼ hours by freight train | 6 50 |
| | 23. | " Rogers and 40 men detained by freight train from 1.50 p. m. till 5.30 p. m., 2 50 ..... | 10 75 |
| | 23. | " Pearod and 31 men detained by freight train 1¾ hours, as above..... | 5 25 |
| 419 | 25. | " Cadwell and Farrington with 30 men ¼ day, by engine broken down..... | 9 00 |
| | 27. | " Cadwell and Farrington with 30 men ½ day, as above | 18 00 |
| | 28. | " Cadwell and Farrington with 30 men ¼ day, helping passenger ..... | 9 00 |
| | 27. | " Cadwell and Farrington with 4 men bailing water ½ day ..... | 2 00 |
| | 27. | " Rogers and 40 men detained by freight 4 hours.... | 10 75 |
| | 27. | " Pearod and 33 men detained by freight 3 hours ... | 9 58 |
| May | 1. | " Copeland and 40 men detained ½ day, engine broke. | 25 50 |
| | 2. | " Copeland and 40 men detained 1 hour, engine freight off..... | 3 90 |
| | 4. | " Copeland and 40 men detained 1 hour, wood and freight train on track ..... | 3 90 |
| | 9. | " Copeland and 36 men idle ¼ day, engine went off... | 11 42 |
| | 18. | " Copeland and 36 men idle ¼ day, engine went to P. city..... | 11 42 |
| | 22. | " Copeland and 36 men idle ¼ day, engine went to P. city..... | 11 42 |
| | 6. | " Caldwell and 24 men idle ¾ day, engine broken.... | 23 10 |
| | 6. | " Farrington and 4 men idle ¾ day, engine broken... | 5 10 |
| | 12. | " Caldwell and 24 men idle ¾ day, engine broken.... | 23 10 |
| | 12. | " Farrington and 4 men idle ¾ day, engine broken... | 5 10 |
| | 13. | " Caldwell and 24 men idle 1 day, engine broken.... | 30 80 |
| | 13. | " Farrington and 4 men idle 1 day, engine broken... | 6 80 |
| | 29. | " Caldwell and 24 men ¾ day, engine broken..... | 23 10 |
| | 29. | " Farrington and 4 men ¾ day, engine broken..... | 5 10 |
| | 20. | " Dodge and 26 men detained ½ day, engine off..... | 17 85 |
| | 22. | " Dodge and 27 men detained ½ day, away for repairs | 18 45 |

| | | | |
|---|---|---|---|
| May | 22. | For Daniells and 31 men detained by freight 1¾ hours.. | 4 25 |
| | 22. | " Tripp and 4 men detained 1 hour, freight 1½ hours behind ..... | 80 |
| June | 2. | " Copeland and 36 men detained 1½ hours, engine broken ..... | 5 82 |
| | 11. | " Copeland and 33 men detained ¾ day, engine broken | 32 81 |
| | 13. | " Copeland and 22 men detained ¼ day, engine broken | 7 50 |
| | 8. | " Copeland and 36 men detained 2½ days by passenger train..... | 9 15 |
| | 2. | " Stewart and 3 men 1½ hours, engine broken..... | 67 |
| | 11. | " Stewart and 3 men 3¼ days, engine broken ..... | 4 50 |
| | 13. | " Stewart and 3 men ¼ day, engine broken ..... | 1 50 |
| | 4. | " Caldwell and 35 men detained by freight ¼ day.... | 11 5[illegible] |
| | 7. | " Caldwell and 35 men detained ½ day, engine broken | 23 1[illegible] |
| | 8. | " Caldwell and 34 men detained ½ day, engine broken | 22 [illegible] |
| | 4. | " Farrington and 4 men detained ¼ day by freight train..... | 1 [illegible] |
| | 7. | " Farrington and 4 men detained ½ day, engine broken | 3 [illegible] |
| | 8. | " Farrington and 4 men detained ½ day, engine broken | 3 |
| | 6. | " Tripp and 4 men detained 1½ hours by freight..... | 1 |
| | 24. | " Tripp and 4 men detained 1¼ hours by freight..... | 1 [illegible] |
| | 27. | " Tripp and 4 men detained 1$\frac{25}{60}$ hours by freight.... | 1 [illegible] |
| 420 | 29. | " Tripp and 4 men detained 1¼ hours by freight..... | 1 0[illegible] |
| | 30. | " Tripp and 4 men detained 1½ hours by freight..... | 1 0[illegible] |
| | 8. | " Daniels and 27 men detained ¼ day by passenger train..... | 9 06 |
| | 4. | To Bailey and 26 men detained 2 hours by freight..... | 5 83 |
| | 4. | To Bailey and 30 men detained, No. 14 bursting steam pipe ..... | 1 00 |
| | 8. | " Bailey and 24 men detained by freight train 1 hour. | 2 70 |
| | | | $559 08 |

421 [For map see original.]

*Receipts and disbursements of the La Crosse and Milw. Railroad by Bronson and Soutter, trustees, under their agreement with S. Chamberlain, mortgage in possession.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1859. | | | | 1859. | | | |
| December. | From freight income | 46,664 79 | | Dec. 1 | By operating expenses | 35,401 82 | |
| | " passenger " | 13,713 30 | | | " foreign balances | 12,793 00 | |
| | " foreign tickets | 16,417 21 | | | " back charges | 6,000 00 | |
| | " express | 1,126 08 | | | " incumbrances on real estate | 1,787 94 | |
| | " miscellaneous | 1,665 65 | | | " right of way eastern division | 400 00 | |
| | | | 79,587 03 | | " " w. " | 808 01 | |
| | | | | | | | 57,190 77 |
| 1860. | | | | 1860. | | | |
| January. | " freight income | 24,832 11 | | January. | " operating expenses | 30,882 58 | |
| | " passenger " | 8,532 70 | | | " foreign balances | 17,595 83 | |
| | " foreign tickets | 7,643 14 | | | " back charges | 3,866 96 | |
| | " express | 820 30 | | | " incumbrance on real estate | 4,325 80 | |
| | " miscellaneous | 19,017 30 | | | " right of way eastern division | 160 00 | |
| | | | 60,845 55 | | " " w. " | 532 36 | |
| | | | | | " P. Dow | 1,145 19 | |
| | | | | | " depot buildings | 1,000 00 | |
| | | | | | " State taxes | 4,924 54 | |
| | | | | | " rolling stock | 7,215 45 | |
| | | | | | " miscellaneous | 2,739 91 | |
| | | | | | | | 74,388 62 |
| February. | " freight income | 20,762 93 | | February. | " operating expenses | 25,444 53 | |
| | " passenger " | 8,014 71 | | | " foreign balances | 4,140 50 | |
| | " foreign tickets | 9,827 55 | | | " back charges | 2,461 94 | |
| | " express | 881 05 | | | " right of way western division | 518 13 | |
| | " mail | 5,917 15 | | | " bridge construction | 3,275 85 | |
| | " miscellaneous | 6,542 41 | | | " rolling stock | 3,900 00 | |
| | | | 51,945 80 | | " miscellaneous | 1,010 74 | |
| | | | | | | | 40,751 69 |
| March. | " freight income | 29,502 84 | | March. | " operating expenses | 26,158 35 | |
| | " passenger " | 11,507 03 | | | " foreign balances | 5,063 15 | |
| | " foreign tickets | 12,694 20 | | | " back charges | 4,648 77 | |

*Exhibit No.* 12—Continued.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1860. | | | | 1860. | | | |
| March. | From express | 891 41 | | March. | By incumbrances on real estate | 1,091 66 | |
| | " mail | 00 | | | " right of way w. division | 302 25 | |
| | " miscellaneous | 323 32 | | | " trustees 1st mortg for interest | 5,037 50 | |
| | | | 54,918 80 | | " miscellaneous | 100 00 | |
| | | | | | | | 42,401 68 |
| April. | " freight income | 49,463 10 | | | | | |
| | " passenger " | 13,271 30 | | 425 | By amount brought forward | | 214,732 76 |
| | " foreign tickets | 13,700 23 | | April. | " operating expenses | 29,555 33 | |
| | " express | 890 59 | | | " foreign balances | 4,835 28 | |
| | " miscellaneous | 1,538 32 | | | " back charges | 21,348 89 | |
| | | | 78,863 54 | | " incumbrances on real estate | 4,524 00 | |
| | | | | | " right of way eastern division | 30 00 | |
| | | | | | " " w. " | 220 00 | |
| | | | | | " depot buildings | 1,059 14 | |
| May 18 | " freight income | 28,585 69 | | | " miscellaneous | 477 01 | |
| | " passenger " | 8,007 81 | | | | | 62,049 65 |
| | " foreign tickets | 1,303 55 | | May. | " operating expenses | 14,244 71 | |
| | " express | 277 22 | | | " foreign balances | 9,658 13 | |
| | " miscellaneous | 4,970 93 | | | " back charges | 14,749 03 | |
| | | | 43,145 20 | | " incumbrances on real estate | 4,062 64 | |
| | | | | | " right of way w. division | 115 16 | |
| 424 | For amount brought forward | | 369,305 92 | | " trustees expenses | 2,198 17 | |
| | | | | | " trustees 1st mortg. for interest | 33,475 76 | |
| | | | | | " rolling stock | 3,080 26 | |
| | | | | | | | 81,583 86 |
| | | | | | By balance forward to acc. treas'rs acc | | 10,939 65 |
| | | | 369,305 92 | | | | 369,305 92 |

426 EXHIBIT No. 13.

*Receipts and disbursements ac. La Crosse and Milwaukee Railroad. Bronson & Soutter, trustees in foreclosure.*

| 1860. | RECEIPTS: | | |
|---|---|---|---|
| May 19 to June 9. | Balance from S. Chamberlain, mortgagee | 10,939 65 | |
| | Freight income | 38,881 82 | |
| | Passenger do | 10,491 00 | |
| | Freight tickets sold | 16,338 83 | |
| | Express service | 438 17 | |
| | Mail do. | 605 32 | |
| | Telegraph and Br. tolls | 89 99 | |
| | Miscellaneous | 1,610 11 | |
| | | | 79,394 89 |
| 1860. | DISBURSEMENTS: | | |
| May 19 to 1861. | Operating expenses | 35,617 53 | |
| | Foreign ticket balances | 3,153 12 | |
| | Back charges | 3,000 00 | |
| May 28. | Incumbrances on R. E. | 1,031 69 | |
| | Right of way W. D. | 98 66 | |
| | Miscellaneous | 388 84 | |
| | State license, 1860 | 6,654 93 | |
| | Foreclosure disbursements as per account, (a) | 9,893 57 | |
| | | | 59,838 34 |
| | Balance applicable to interest and other charges under the trust | | 19,556 55 |

EXHIBIT No. 14.

Green C. Bronson and James T. Soutter, of the city and State of New York, trustees named in the mortgage or deed of trust made by the La Crosse and Milwaukee Railroad Company on the 17th day of August, 1857, to secure the payment of the bonds of the company, to the amount of one million of dollars, therein mentioned, and the interest on the same, by the terms of which mortgage or deed of trust, the trustees, upon default made by said company or its assigns in the payment of the interest warrants or coupons on said bonds, or
427 any of them, claim the right to demand and receive possession of all and singular the railroad and other property covered by and included in the said mortgage or deed of trust, and to sell the same as therein provided.

And Selah Chamberlain, who is in possession of that portion of the railroad, and other property pertaining thereto, covered by and included in said mortgage or deed of trust, extending from Milwaukee to Portage City, as well as the western end of the so-called the La Crosse and Milwaukee railroad, extending from Portage City to La Crosse,

and is operating said road or roads under and by virtue of a sealed instrument commonly called a lease or mortgage, executed by the La Crosse and Milwaukee Railroad Company, dated September 26th, 1857. By the terms of which instrument, he, the said Chamberlain, was directed by the said company, and did stipulate, among other things to be done and payments to be made, that he would, from the nett earnings or revenue of the said railroad, pay the interest warrants or coupons upon the said one million dollars of the bonds described in said mortgage or deed of trust, as the same should become due and payable. And default having been made upon the interest warrants or coupons aforesaid, due and payable at the Bank of the Republic, in the city of New York, on the 1st day of Sept., 1859, and the said trustees having, in consequence of such default for the space of more than sixty days, become entitled to demand, and have demanded, possession of the said railroad and other property covered by and included in said mortgage or deed of trust from the said Chamberlain; and said Chamberlain claiming the right to retain the possession of the said railroad and property, and to operate the same during the progress of legal proceedings for the foreclosure and sale of the same by said trustees, and being willing that the earnings and revenues of said railroad, and the disbursements of the same according to the terms and spirit of the provisions of the instrument under which his rights of possession accrued; and the said trustees being desirous of satisfying their bondholders or cestui que trusts under the said mortgage or deed of trust of the application of the entire receipts and revenues of the said road and property to the purposes expressed in the instrument, lease, or mortgage, under and by virtue of which said Chamberlain holds possession of said road; and the said Chamberlain being willing that they should enjoy every facility thereto, and both parties being desirous of avoiding litigation as far as the same can be done, do agree to and with each other as follows:

First. The said Selah Chamberlain shall retain and have the actual possession to all intents and purposes of the said railroad and other premises and things to him granted in and by the said instrument of lease or mortgage, and the control and management of the railroad in its various departments, as is intended he should have in and by said instrument of mortgage or lease, reference being hereby made to said lease or mortgage, and the supplemental or explanatory part thereof, between said Chamberlain and the La Crosse and Milwaukee Railroad Company by an instrument dated September 28th, 1857, and the resolutions of said company, dated the 21st day of October,
428 1858. But the said Chamberlain does agree, and in order to carry out the intent and purpose aforesaid, that he will cause to be paid to or deposited with the said trustees, or with such agent or cashier as they may nominate and appoint, all the earnings and revenue of said road, that is to say, all the earnings and revenue of the eastern division of said road, of which said Chamberlain is in possession, including all the revenues or receipts from the use of the rolling stock on any other part or portion of the so-called La Crosse and Milwaukee railroad, from day to day, as the same may be earned and received, and to that end,

intent, and purpose, will instruct the officers, agents, and servants under him. And the said trustees, on their part, do covenant and agree that they will appropriate, pay out, and disburse the earnings and revenues of said eastern division of said road, so by them to be received, or intended to be received, to the actual uses, purposes, and objects intended and contemplated in and by the said lease or mortgage to said Chamberlain, and that they will so appropriate, pay, and disburse said earnings and revenues, from day to day, or month to month, as the exigencies and proper operating of said road, or the other provisions in said lease or mortgage, may require.

The operating expenses to be paid by said trustees, as aforesaid, shall include those accruing during the month of November.

In order that the said trustees may actually have and enjoy the privileges and right of circumspection over the earnings and revenues of said road, and the receipt, control, and disbursement thereof as aforesaid, the said Chamberlain does agree that at any time or times, when upon good cause shown to him by the said trustees, that any officer, agent, or servant under him who may, in his capacity, be in the receipt of any earnings or revenue, or in the auditing of any accounts or outlays, is or has been guilty of any wilful dereliction of duty in his said employment as such officer, agent or servant, he the said Chamberlain, shall discharge such officer, agent, or servant, and appoint in his stead such suitable person as the said Chamberlain and the said trustees may agree upon, the said trustees having the right of nomination.

In order to facilitate and aid the said trustees in the enjoyment and exercise of the rights and privileges herein accorded and given to them, the said Chamberlain hereby agrees to furnish and give to them access to any and all books and papers relating to his management of said road, the same as he is required to do to said La Crosse and Milwaukee Railroad Company under his said lease or mortgage.

This agreement is to take effect on the first day of December, A. D. 1859.

It is further understood that the trustees may, if they see fit,
429 make such allegations as they may be advised to entitle them to a receiver, and also may file the usual motion therefor; but no receiver shall be appointed, and no further steps shall be taken therefor, so long as the said Chamberlain shall continue to act upon and fulfil this agreement. And in case of the violation of any material part hereof, then said trustees may proceed for a receiver the same as though this agreement had never been made. And the said Selah Chamberlain further agrees that he will not, during the continuance of this agreement, part with or transfer the possession of said road nor any of its equipments covered by and included in the said mortgage or deed of trust, to any person or persons, or corporations whatever, unless upon payment to him by the La Crosse and Milwaukee Railroad Company, or those lawfully claiming under it, the right to redeem said Chamberlain's encumbrances and claim from him his said possession, in which case this agreement shall cease and determine.

It is agreed that the proceedings to foreclose shall be conducted amicably, so far as the parties hereto are concerned, and that their respective counsel shall aid in carrying out the spirit of this agreement.

A decree of foreclosure may be procured, by the joint efforts of the counsel of both parties, to secure, if practicable, the sale of said road and premises subject to the mortgage or deed of trust hereinbefore mentioned, and with the view of giving and securing to said Chamberlain every facility in becoming the purchaser under such foreclosure: *Provided*, That nothing herein contained shall preclude the trustees from bidding at such sale, for the protection of the interest of the bondholders. The trustees will make no opposition to the establishment by said Chamberlain of his claims upon the said La Crosse and Milwaukee Railroad Company, as next in order to said mortgage or deed of trust, and if this form of decree should prove impracticable, or be refused by the court in which proceedings may be pending, the trustees will consent to any other form of decree which the counsel for the respective parties hereto may think best adapted to protect the claims and interest of said Chamberlain, in the right of standing next in order to the said mortgage or deed of trust, securing, however, to the bondholders under the same, all their rights of priority.

If the said Chamberlain shall become the purchaser of the road and property aforesaid, under a decree of foreclosure and sale, the trustees will extend a credit of nine and twenty-four months upon so much of the arrears of interest as may remain due, to the holders of the one million of dollars of the bonds of said company issued under and secured by the aforesaid mortgage or deed of trust, and be in-
430 cluded in the decree of foreclosure and sale, not exceeding in amount two coupons on each bond, and receipt for the same to the officer making such sale, as so much cash taking from the said Chamberlain, such reasonable security for the payment thereof, and the interest thereon, at the rate of eight per cent. per annum, as may be satisfactory to the trustees, but such security shall be perfected by the said Chamberlain, on or before the time of the making of such sale.

The s'd trustees shall, as far as practicable, procure from the bondholders represented by them full and perfect authority to make such arrangements for the liquidation, exchange, or payment, and cancellation of their said bonds, as may best promote the objects to be obtained by the foreclosure of the mortgage or deed of trust, and perfecting the sale of the road and property covered by and included therein, and shall, if possible, procure the said bonds to be deposited with them in trust for the accomplishment of these objects.

It is understood and agreed that whereas the said trustees are acting in such a capacity as to limit the responsibilities assumed by them within the scope of powers conferred by their trusts, that they shall be only held liable for the use of their best exertions, in good faith, to carry out their part of this agreement to the full extent of their powers as trustees; and where the stipulations cannot be either legally or practicably performed, or where, by the performance, the trustees would render themselves personally responsible to the bondholders, that they shall be held released and absolved therefrom.

In testimony of all which, the parties to these presents have hereunto set their hands and seals, at Milwaukee, this thirtieth day of

November, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) GREENE C. BRONSON, [SEAL.]
JAS. T. SOUTTER, [SEAL.]
*By their attorneys in fact,*
F. A. PALMER.
PRENTIS DOW.

S. CHAMBERLAIN. [S.]

431 EXHIBIT No. 15.

We, Greene C. Bronson and James T. Soutter, trustees named in the deed of the La Crosse & Milwaukee Railroad Company, bearing date August 17th, 1857, and recorded in the office of the secretary of state of the State of Wisconsin, made to secure the payment of the bonds of the company therein mentioned, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Francis A. Palmer and Prentis Dow, of the city of New York, our true and lawful attorneys or agents to demand and receive possession, and enter into and upon, and take possession of all and singular the railroad and all the other property, real and personal, conveyed or intended to be conveyed by the said deed, with authority to take any and all legal measures to enforce the payment of the bonds mentioned in or intended to be secured by the said deed, giving and granting unto our said attorneys full power and authority to do and perform all and every lawful act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as we might or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our our said attorneys or their substitutes shall lawfully do or cause to be done by virtue hereof. But said attorneys, and all attorneys and agents acting under them, are to be subject to our instructions and control, and they are not to look to us, but to such of the bondholders as have or may request him or them to act, for their fees, charges, and expenses in the premises. If the bondholders who have agreed to indemnify the trustees shall pay or incur any costs, charges, or expenses in the premises which shall be allowed to the trustees out of any funds which may come to their hands, the trustees will refund the same to said bondholders.

In witness whereof, the parties hereto set their hands and seals this first day of November, 1859.

GREENE C. BRONSON. [ ]
JAS. T. SOUTTER. [ ]

EXHIBIT No. 16.

*Schedule D.*

*Balances on the books, Dec. 1, 1859, collected by trustees.*

| | | |
|---|---|---|
| Quuincy & Toledo R. R. | 42 40 | |
| Saratoga R. R. | 12 00 | |
| Belfontaine & Ia. R. R. | 5 97 | |
| L. Everingham, agent | 19 10 | |
| E. Mariner | 300 00 | |
| D. W. Armstrong & Co | 1 50 | |
| Indianapolis & Cina. R. R. | 134 66 | |
| | | 515 63 |
| Earnings paid in | | 21,085 49 |
| | | 21,601 12 |

EXHIBIT No. 17.

*Balances due from the road Dec. 1, 1859, paid by the trustees of the second mortgage (Bronson & Soutter) La. Cr. & Mil. R. R.*

| | | |
|---|---|---|
| E. H. Goodrich, manager | 484 47 | |
| Pay-rolls of Nov'r | 20,659 10 | |
| S. R. S. Andries, ag't | 12 88 | |
| | | 21,156 35 |
| Mil. & Chi. R. R. | 909 92 | |
| Mich. Cen. R. R. | 2,895 01 | |
| Gt. Western R. R. | 3,799 65 | |
| Det. & Mil. R. R. | 2,432 93 | |
| N. Y. Central R. R. | 3,403 34 | |
| Western Mass. R. R. | 3,533 90 | |
| Hudson River R. R. | 129 44 | |
| Northern R. R., N. Y. | 308 25 | |
| Ill's Central R. R. | 108 60 | |
| Buffalo & Lake Huron R. R. | 244 68 | |
| Buffalo, N. Y. & Erie R. R. | 65 57 | |
| Canadaigua & Elmira R. R. | 2 40 | |
| N. Y. & Erie R. R. | 40 33 | |
| Grand Trunk R. R. | 1,759 36 | |
| Mich. So. & N. Ia. R. R. | 1,336 51 | |
| Cleveland & Toledo R R. | 500 35 | |
| Pittsb'g, Ft. Wayne & C. R. R. | 384 10 | |
| 433 Penns'a Central R. R. | 793 58 | |
| Cleveland & Pitts. R. R. | 79 10 | |
| Balto. & Ohio R. R. | 122 05 | |
| Buffalo & Erie R. R. | 434 02 | |
| Terre Haute, Alton & St. Louis | 12 | |

| | | |
|---|---|---|
| Rutland & Washington R. R. | 54 90 | |
| Cheshire R. R | 49 91 | |
| Rutland & Burlington R. R. | 193 40 | |
| Chicago & Northwestern R. R. | 75 57 | |
| Lafayette & Indianapolis R. R. | 146 89 | |
| New Albany & Salem R. R. | 127 67 | |
| Chi., Alton & St. Louis R. R. | 577 60 | |
| C. P. & Ashtabula R. R. | 716 25 | |
| W'msport & Elmira R. R. | 77 99 | |
| Catawissa & W. R. R. | 18 64 | |
| People's Line Steamers | 79 36 | |
| Phila. & Reading R. R. | 55 27 | |
| | | 25,488 04 |
| Carried over | | 46,644 39 |
| Vermont Central R. R. | 586 68 | |
| Northern Central R. R. | 56 20 | |
| Jeffersonville & Ia. R. R. | 16 50 | |
| Stage ticket acc't | 333 25 | |
| Dayton, Xenia & Belssie R. R. | 5 | |
| Little Miami, X. & R. R. | 1 45 | |
| Ind'a Central, Dayton & Western R. R. | 40 48 | |
| Central Ohio R. R. | 4 15 | |
| Cleveland, Col. & Cin. R. R. | 36 80 | |
| Boston & Worcester R. R. | 5 66 | |
| Dayton & Mich. R. R. | 23 40 | |
| Cinn., Ham. & Dayton R. R. | 35 | |
| Lake Mich. St. Bt. Co. | 25 30 | |
| Wisconsin Stage Co. | 83 75 | |
| Schumacher & Johnson | 12 69 | |
| H. Bosworth & Sons | 531 83 | |
| A. J. Snelflohn | 39 85 | |
| Lansing Bonnell | 33 37 | |
| D W. Keyes | 150 | |
| Caswell & Gaylord | 133 63 | |
| Sturr & Co. | 216 15 | |
| E. Porter | 471 75 | |
| E. H. Goodrich | 1,666 66 | |
| S. H. Cotton | 456 73 | |
| 434 N. S. Pitkin & Son | 377 66 | |
| R. D. Jennings | 150 00 | |
| Haney & De Bow | 164 55 | |
| J. S. Howard & Co. | 1,527 60 | |
| H. J Nazro & Co. | 582 45 | |
| H. Niedecken & Co. | 36 81 | |
| H. J Rumsey | 2,653 12 | |
| J. Bonnell | 581 44 | |
| Webb & Rumsey | 30 75 | |
| Blanchard & Arnold | 889 63 | |

| | | |
|---|---|---|
| Higgins, Moury & Co. | 18 00 | |
| A. H. Peters | 212 91 | |
| | | 12,191 20 |
| Carried over | | 58,835 59 |
| Pony, Farmer & Co. | | 333 31 |
| Bradford Bros. | | 8 31 |
| A. Spencer | | 40 00 |
| Wis. Leather Co. | | 37 62 |
| G. D. Norris | | 20 00 |
| H. George | | 50 00 |
| A. E. Goodrich | | 363 52 |
| A. L. Smidt | | 48 90 |
| Patton & Williams | | 213 90 |
| W. S. Brown | | 6 09 |
| New England Car Sp. Co. | | 257 81 |
| Milwaukee Gas Co. | | 92 75 |
| W. Bailey, Lang & Co. | | 397 66 |
| Isaac Kingsley | | 16 50 |
| J. A. Goodwin | | 20 00 |
| G. Pfister | | 13 60 |
| C. O. Paige | | 42 00 |
| Wis. Tel. Co. | | 40 45 |
| J. M. Kimball | | 12 75 |
| Tibbitts, Starkweather & Co. | | 491 81 |
| J. J. Talmadge & Co. | | 26 65 |
| Kellogg & Strong | | 7 23 |
| R. Morin | | 499 00 |
| Adam Steitz | | 48 00 |
| J. B. Anderson | | 500 77 |
| R. E. Gillett | | 37 67 |
| Allen & Chase | | 18 75 |
| C. W. Kellogg | | 10 00 |
| 435 W. R. Sill | | 191 23 |
| Eno. Meyer | | 12 77 |
| H. Rogers & Co. | | 3 50 |
| John Crossman | | 96 38 |
| Guy H. Salsbury | | 79 00 |
| Fred. Wild | | 41 66 |
| Blair & Parsons | | 5 25 |
| N. Brick | | 2 50 |
| Carried over | | 62,922 93 |
| Sholes, Crounse & Co. | | 7 29 |
| J. B. Chamberlin | | 44 00 |
| W. B. Walton & Son | | 59 01 |
| D. W. Huntington | | 6 50 |
| J. W. Putnam | | 169 35 |
| Wyandotte Rolling Mill | | 2,236 76 |
| Lloyd & Supple | | 57 00 |

| | |
|---|---|
| C. S. Wood | 143 50 |
| D. Nepper & Co | 2 44 |
| Prior, Harbeck & Co | 12 00 |
| F. P. Metcalf | 62 89 |
| W. F. Hurd | 8 58 |
| F. Paige | 61 25 |
| N. Washburn | 696 96 |
| Jas. Sheriff | 29 10 |
| Noonan & McNah | 4 50 |
| Stone, Chisholm & Jones | 256 37 |
| G. W. Horton | 47 50 |
| L. E. Webb | 50 00 |
| E. H Curl | 18 00 |
| E. C. Jennings | 4 50 |
| N. Berthman | 30 00 |
| A. Dunn | 10 66 |
| Stoughton Richard | 17 72 |
| C. G. McCulloch | 10 26 |
| Franklin Starr | 23 00 |
| Peter Schram | 1 50 |
| Butler & Post | 10 00 |
| Converse, Young & Co | 224 00 |
| Otis & Co | 1,053 36 |
| John Schwarer | 24 06 |
| Ira P. Wood | 35 00 |
| 436 N. Bickwell | 30 00 |
| G. H. Sterns $1 00, and G. May $1 00 | 2 00 |
| H. H. Porter | 22 59 |
| Str. Chippeway Valley | 87 16 |
| Total | 68,481 72 |
| N. E. Car Spring Co | 308 01 |
| | 68,789 73 |

EXHIBIT No. 18.

DR. *Bronson & Soutter, trustees, in acc't (for receipts and disbursements) with the La Cross and Milwaukee railroad,* CR.

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec. | 1. | To balance due the road at date, collected or realized by the trustees—Exhibit 16 | $515 63 |
| | | " earnings of November paid to the trustees | 21, 085 49 |
| | 31. | " earnings for this month | 44, 697 50 |
| 1860. | | | |
| Jan. | 31. | " do do | 32, 883 56 |
| Feb. | 29. | " do do | 36, 669 76 |
| M'ch | | " do do | 44, 269 15 |
| Ap'l | 30. | " do do | 50, 532 26 |

| | | | | |
|---|---|---|---|---|
| May 31. | To earnings for this month | | | 69, 623 47 |
| June 9. | " do do | | | 10, 284 69 |
| Jan'y | " cash, S. Chamberlain | $11,460 00 | | |
| 15. | " do do | $11,115 45 | | |
| May 18. | " do do | 3,080 26 | | |
| | | | 14,195 71 | |
| | | | | 25, 655 71 |
| | " sundry operating expenses paid by S. Chamberlain, viz: | | | |
| | S. Chamberlain & Co | $715 30 | | |
| | Geo. Abert | 226 57 | | |
| | D. W. Keyes | 230 23 | | |
| | Beck & Gardner | 110 00 | | |
| | | | | 1, 282 10 |
| June 9. | " balances due from the road for operating expenses and connecting railroads, upon surrender to H. Crocker, receiver—Exhibit 23 | | | 44, 503 56 |
| | | | | 382, 002 88 |

1860.
June 9. Balance applicable to interest.... $20,793 87

437

1859.

| | | | |
|---|---|---|---|
| Dec'r 1. | By balances due from the road for operating expenses and to connecting railroads, left unpaid at this date by S. Chamberlain, and which were paid by trustees—Exhibit 17 | | $68, 789 73 |
| 31. | " operating expenses this month | | 28, 669 82 |
| 1860. | | | |
| Jan'y 31. | " do .. ....do.....do | | 26, 251 23 |
| Feb'y 29. | " do.....do.....do | | 22, 192 06 |
| March 31. | " do.....do.....do | | 29, 833 50 |
| April 30. | " do.....do.....do | | 30, 755 29 |
| May 31. | " do.....do.....do | | 44, 354 83 |
| June 9. | " do.....do.....do | | 15, 528 93 |
| Jan'y 5. | " rolling stock—cars | $11,115 45 | |
| May 18. | " do.....do | 3,080 26 | |
| | | 14, 195 71 | |
| Jan'y | " incumbrances on R. E. paid—Exhibit 19 | | 16, 823 73 |
| | " State taxes.....do | | 4, 924 54 |
| | " right of way payments—Exhibit 20 | | 3, 184 57 |
| Feb'y | " depot buildings at Junction | | 2, 059 14 |
| May | " first mortgage interest sent to trustee; 1st mort. for int. due Nov. 1, '59 | | 38, 513 26 |
| | " pay'g bills, S. Chamberlain for steamer Keokuck | | 573 74 |
| June 9 | " balances due to the road, turned over to and collected by receiver—Exhibit 21 | | 1, 172 79 |
| | " expenses under the trust deed in foreclosure—Exhibit 22 | | 13, 386 14 |
| | Balance applicable to payment; interest on mortgage to trustees | | 20, 793 87 |
| | | | 382, 002 88 |

438

EXHIBIT No. 19.

*Schedule "E."*

*Incumbrances on depot grounds & R. E. paid.*

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec. | 20. | Estate of McCarty, Lapham, agent | 1,721 94 |
| | 20. | Int. on mortgage, Rosenthall, B. & O | 66 00 |
| 1860. | | | |
| Jan'y | 23. | Chas. H. Williams, adm'r | 1,000 00 |
| | | J. F. Luck, int. on mort | 204 00 |
| | | J. G. Inbusch ...do | 121 80 |
| | 31. | Chas. H. Williams, adm'r | 3,000 00 |
| Mch. | 16. | Paym't by S. S. Case, ag't at P. City | 91 66 |
| | 20. | Chas. H. Williams, adm'r | 1,000 00 |
| Apl. | 18. | Maria Rolf, J. H. Paine & Sons | 500 00 |
| | 26. | Reed & Lamb, A. C. May, att'y | 3,000 00 |
| | 27. | Maria Rolf, Paine & Son | 1,024 00 |
| May | 18. | Chas. H. Williams, adm'r | 635 03 |
| | 31. | Reed & Lamb, A. C. May, att'y | 3,427 61 |
| June | 9. | Maria Rolf, Paine & Son, att'y | 1,031 69 |
| | | | 16,823 73 |

EXHIBIT No. 20.

*Schedule of payments for right of way, made by Bronson & Soutter, trustees, Dec., '59 to June, '60.*

WESTERN DIVISION.

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec. | | P. M. Johnson, right of way agent | 70 50 |
| | | Emmons & Van Dyke, att'ys | 56 76 |
| | | L. St. John | 35 00 |
| | | W. R. Sill | 212 00 |
| | | H. B. Johns | 20 00 |
| | | D. Vittum | 75 00 |
| | | G. W. Mosher | 50 00 |
| | | C. W. Sargeant | 40 75 |
| | | W. R. Sill | 248 00 |
| 1860. | | | |
| Jan'y. | | F. C. Dodge | 51 00 |
| | | A. Bakker | 30 00 |
| | | E. E. Winner | 71 00 |
| | | P. M. Johnson | 56 40 |
| | | W. R. Sill | 170 00 |
| | | Vincent, by W. R. Sill | 69 30 |
| 439 | | J. Shaw | 75 00 |
| | | P. M. Johnson | 9 66 |
| Feb'y. | | M. Winship | 40 00 |
| | | P. M. Johnson | 33 13 |
| | | W. W. Jones | 50 00 |
| | | Mr. Tallman | 360 00 |
| | | J. H. Boorman | 35 00 |

| | | | |
|---|---|---|---|
| Mch. | P. M. Johnson | 27 25 | |
| | Hutchins | 100 00 | |
| | Parsons | 100 00 | |
| | W. R. Sill | 75 00 | |
| Apl. | F. Whitbeck, by Sill | 220 00 | |
| May. | J. A. Kellogg | 100 00 | |
| | P. M. Johnson | 15 16 | |
| June 9. | P. Burns | 50 00 | |
| | P. M. Johnson | 13 66 | |
| | Marwing Treadway | 35 00 | |
| | | | 2,594 57 |

EASTERN DIVISION.

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec. | Oakley Beach | 300 00 | |
| | Alban B. Alden | 100 00 | |
| 1860. | | | |
| Jan'y. | J. H. Buening | 80 00 | |
| | H. Leiderbach | 80 00 | |
| Apl. | E. Smith | 30 00 | |
| | | | 590 00 |
| | | | 3,184 57 |

EXHIBIT No. 21.

*Schedule "B."*

*Balances due to the road June 9, 1860, received by H. Crocker, rec'r.*

| | |
|---|---|
| L. Everingham, ag't | 711 93 |
| S. A. S. Andrews, ag't | 231 15 |
| Indianapolis & Cin. R. R. | 62 |
| Boston & Worcester do | 15 37 |
| Belfontain & Indianapolis R. R. | 24 72 |
| H. T. Rumsey | 05 |
| Milwaukee & Miss. R. R. | 9 10 |
| J. J. Tallmadge | 10 |
| Otis & Coy | 7 63 |
| Schooner Jas. Christie | 167 62 |
| M. Steele | 4 50 |
| | 1,172 79 |



EXHIBIT No. 22.

*Disbursements of the trustees of the 2d mortgage La Crosse and Milwaukee railroad, under authority of the deed of trust and in foreclosure of the same.*

| | | | |
|---|---|---|---|
| 1859. | | | |
| Sept. 1. | For advertising, stationery, &c | $15 15 | |
| Nov. 19. | " railroad fare and expenses for F. A. Palmer to Mil | 82 38 | |
| | " R. R. fare & exp's, P. Dow | 28 38 | |
| Dec. 13. | " stationery, telegraphs, &c | 12 70 | |

| | | | | | |
|---|---|---|---|---|---|
| Dec. | 13. | For copying papers | 4 | 70 | |
| | 31. | " telegraphs, stationery, and P | 11 | 85 | |
| 1860. | | | | | |
| Jan'y | 16. | " recording deeds and marshal's fees | 73 | 19 | |
| M'ch | 17. | " copying papers | 9 | 00 | |
| Ap'l | 1. | " postages, telegraphs, &c | 11 | 21 | |
| June | 29. | " exchange on N. Y | 270 | 00 | |
| July | 1. | " postage acc't | 2 | 89 | |
| Aug't | 6. | " travelling exp's to N. Y | 25 | 50 | |
| Sept. | 10. | " Redfield on R. R. and postages, &c | 11 | 30 | |
| | 22. | " travelling expenses to N. Y | 31 | 25 | |
| Oct. | 1. | " postage bill and telegrams | 9 | 73 | |
| | 27. | " copying papers | 15 | 50 | |
| Nov. | 29. | " travelling expenses to N. Y | 28 | 75 | |
| Dec. | 19. | " clerk's fees—copying | 17 | 60 | |
| 1861. | | | | | |
| Jan. | 1. | " postage bill | 4 | 70 | |
| | 17. | " travelling exp's to N. Y | 83 | 00 | |
| | | " Starr & Son, printing | 96 | 00 | |
| | | " Baker & Gardner, do | 7 | 00 | |
| | | " Mr. Kurtz, copying | | 50 | |
| | 31. | " clerk U. S. court, "opinion" | 8 | 12 | |
| Feb'y | 14. | " Starr & Son, printing b'f | 16 | 00 | |
| M'ch | 18. | " 25 copies Judge Miller's O | 5 | 00 | |
| May | 22. | " travelling exp's to and from N. Y | 56 | 00 | |
| | 25. | " clerk's fees, copying | 30 | 00 | |
| | | " postage bill and stamps | 2 | 07 | |
| | | | | | 969 47 |
| | | " attorneys and counsel fees: | | | |
| | | Thos. L. Ogden and Jas. S. Brown | | | 2,500 00 |
| | | D. E. Wheeler | | | 1,000 00 |
| | | F. Randall | | | 1,000 00 |
| | | Prentis Dow, agent, for services from Nov. 1, 1859, to June 1, 1861, *a* $5,000 pr yr | | | 7,916 67 |
| | | | | | $13,386 14 |

441

## Exhibit No. 23.

*"Schedule C."*

*Balances of acc't due from the road June* 9, 1860, *paid by receiver, H. Crocker.*

| | |
|---|---|
| Pay-roll acc't, May | 20,118 18 |
| Mil. & Horicon R. R | 378 28 |
| Mil. & Chicago R. R | 1,862 70 |
| Michigan Central R. R | 1,351 46 |
| Great Western R. R., Canada | 1,180 37 |
| Detroit & Milwaukee R. W | 1,102 55 |
| N. Y. Central R. R | 1,006 62 |
| Western R. R., Mass | 869 95 |
| Hudson River R. R | 83 50 |
| Northern N. Y. R. R | 380 37 |
| Illinois Central R. R | 4 82 |

| | |
|---|---|
| Buffalo & Lake Huron R. R | 38 73 |
| Buffalo, N. Y. & Erie R. R | 85 20 |
| Canadaigua & Elmira R. R | 2 40 |
| N. Y & Erie R. R | 241 72 |
| Grand Trunk Railway | 722 12 |
| Mich., So. & No. Ia. R. R | 904 87 |
| Cleveland & Toledo R. R | 417 47 |
| Pitts., Ft. Wayne & Chicago | 694 20 |
| Penn'a Central R. R | 279 93 |
| Cleveland & Pittsb'g R. R | 21 15 |
| Balto. & Ohio R. R | 42 73 |
| Buffalo & Erie R. R | 443 31 |
| Terre Haute, Alton & St. Louis R. R | 73 27 |
| Rutland & Washington R. R | 77 72 |
| Cheshire R. R | 99 91 |
| Rutland & Burlington R. R | 249 28 |
| Chicago & N. W. R. R | 624 62 |
| Ind'a & Cincinnati R. R. (error) | |
| Lafayette & Ind'a R. R | 66 09 |
| New Albany & Salem do | 156 19 |
| Chicago, Alton & St. Louis do | 219 75 |
| C. P. and Ashtabula do | 297 04 |
| W'msport & Elmira do | 54 77 |
| Catawissa W. & E. do | 5 48 |
| People's Line Steamers | 22 06 |
| Philadelphia & Reading R. R | 61 16 |
| Carried over | 34,239 97 |

| | |
|---|---|
| 442 Amount brought over | 34,239 97 |
| Vermont Central R. R | 65 78 |
| Northern Central R. R | 28 71 |
| Jeffersonville (Ind'a) R. R | 2 42 |
| Little Miami, Cols. & Xenia R. R | 18 92 |
| Ind., Cin., Dayton & Western R. R | 24 72 |
| Central Ohio do | 8 64 |
| Cleveland C. & C. do | 46 28 |
| Dayton & Michigan do | 24 80 |
| Cinn., Hanni. & Dayton do | 24 60 |
| Wisconsin Stage Co | 83 75 |
| Memphis & O. R. R | 14 00 |
| Mobile & Ohio R. R | 18 10 |
| Racine & Mis. R. R | 7 15 |
| Chi., B. & Quincy R. R | 7 21 |
| Memphis & N. O. Packet Line | 6 75 |
| Southern Miss. R. R | 1 45 |
| N. O., Jackson & Gt. Northern R. R | 5 70 |
| Watertown & Rome do | 7 50 |
| Chi. & Rock Island do | 10 00 |
| Hannibal & St. Jos. R. R | 32 00 |
| H. Bosworth & Sons | 301 34 |
| A. J. Snelflohn | 12 61 |

| | |
|---|---|
| D. W. Keyes | 44 00 |
| N. B. Caswell | 211 11 |
| E. Porter | 539 01 |
| E. H. Goodrich | 1,308 90 |
| Haney & De Bow | 258 47 |
| John Nazro & Co | 96 25 |
| H. Niedecken & Co | 190 90 |
| James Bonnell | 1 88 |
| Blanchard & Arnold | 821 40 |
| Higgins, Mowry & Co | 30 00 |
| Bradford Brothers | 45 03 |
| J. Pritzlaff & Co | 5 50 |
| Wisconsin Leather Co | 26 80 |
| W. Bailey, Lang & Co | 234 60 |
| Carried over | 38,805 65 |

| | | |
|---|---|---|
| 443 | Amount brought forward | 38,805 65 |
| | Isaac Kingsley | 19 33 |
| | F. R. Goodwin | 20 00 |
| | Smith, Sealfleuber & Co | 4 50 |
| | Matson & Loomis | 42 50 |
| | Cinna. Gazette | 18 00 |
| | A. Haynes | 33 50 |
| | A. Greene | 1 65 |
| | Enno Meyer | 37 93 |
| | Guy H. Salsbury | 52 50 |
| | Geo. Bailey | 157 75 |
| | W. B. Walton & Son | 517 15 |
| | L. T. Chase & Co | 24 38 |
| | Prior, Hasbrook & Co | 12 00 |
| | Stone, Chisholm & Juns | 1,520 35 |
| | Chicago Rolling Mill | 2,357 63 |
| | Nich. Berthman | 30 00 |
| | H. H. Porter, ag't | 22 59 |
| | Fox Lake R. R. Co | 182 86 |
| | W. Hamilton | 20 |
| | J. A. Peets | 1 00 |
| | A. W. Lombard | 5 05 |
| | B. G. Wilder & Co | 20 00 |
| | Christian Phile | 5 40 |
| | Timo. Fosin | 18 50 |
| | Arthur McCrea | 10 00 |
| | Cleveland Boiler Plate Co | 216 66 |
| | M. Fale | 4 50 |
| | Bissell & Ewing | 22 93 |
| | Murray, Rockwell & Co | 92 00 |
| | Am. Tube Works | 242 00 |
| | J. J. Parker | 5 00 |
| | | 44,503 56 |

444 EXHIBIT No. 24.

District court of the United States for the district of Wisconsin.

| | |
|---|---|
| NEWCOMB CLEVELAND *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN, BYRON KILBOURN, MOSES KNEELAND, JAMES LUDINGTON, AND OTHERS. | In equity. |

Deposition taken on the part of the complainant before Winfield Smith, one of the masters and commissioners of this court, pursuant to a stipulation filed in this cause.

Mr. M. H. Carpenter, of counsel for the complainant; Mr. Butler, of counsel for the defendants Ludington, Kneeland, and the La Crosse and Milwaukee Railroad Company, and Mr. Emmons, of counsel for the defendant Chamberlain.

WEDNESDAY, 12*th May*, 1858.

Proceedings adjourned to Thursday, 27th May, 1858, at 10 a. m. Byron Kilbourn, being duly sworn for the complainant, testifies and says:

(Mr. Emmonds objects to the competency of the witness on account of his being a party to the suit.)

I was president of the company at the time of making the contract for building the road from Portage to La Crosse. My impression is that the contract was made by the board. I know that certain subsequent contracts have been made modifying that contract. This was while I was president of the board.

Question. At the time these modifications were made, did you know of or approve of them?

(Objected to.)

Answer. One of the modifications was made when I was not here. This was in regard to the construction of the tunnel. The date of this contract was April 30, 1857. I think it was indorsed on the back of the other contract. The second modification extended his contract, and was made with my co-operation.

Question. By whom was this modification of the contract made in regard to the tunnel?

(Objected to as irrelevant, and a matter with which the plaintiff has no concern.)

Answer. I only know from the signatures to the paper. It is executed by Mr. Goodrich, vice-president, on the part of the company, and by Mr. Chamberlain for himself.

Question. Was that indorsement made on its date or subsequently?

(Objected to for the same reason as before.)

Answer. I have no knowledge.

(Mr. Emmons objects to all inquiries and testimony on this
445 subject.)

I saw this indorsement about the time I made my answer in

this case, but I first heard of the existence of the agreement at or before my return home. I made myself a survey of the summit and tunnel in April. I returned to La Crosse with the chief engineer, and wrote to Mr. Goodrich to make an arrangement with Mr. Chamberlain to do the work. I transmitted the letter with sundry verbal communications by Mr. Woodward, the chief engineer. He returned to Milwaukee, and I went on to St. Paul. Subsequently, and within three or four weeks, he joined me at Prescott, on the Mississippi river. That was about May 20. I think I learned from him that the company had arranged with him for the construction of the tunnel work. I speak of the modification of the contract in regard to the work

Question. Did Mr. Goodrich, in price, terms, &c., follow out your directions?

(Objected to for the same reason.)

Answer. I don't think my letter could be properly construed into directions. Those were for the board to make. My letter inclosed an estimate made by me and Mr. Woodward.

Question. How did the estimate correspond with the contract price?

(Objected to.)

Answer. I can't say. I recollect generally that the contract price was higher than the estimate; I can't say how much higher. The stone work was some higher, and the earth work a good deal higher. I don't remember the original estimate. My impression is, that the aggregate cost by the estimate was $70,000, or $80,000. The increase of cost under the contract is owing, I suppose, as much to the increase of quantities as to the increase of prices.

Question. Had there been, up to the time of the Chamberlain judgment, any ratification by the board of the contract made by Goodrich?

(Objected to.)

Answer. I am not aware of any action of the board subsequent to the action of the executive committee in making the contract. That is the action of the board unless repudiated by them under our laws. I suppose they could not repudiate an executed contract. The executive committee consisted of myself, president, and Mr. Goodrich, vice-president, ex-officio, and Moses Kneeland, Samuel Brown, and Garrett Vleit, directors. I was present, and acting in the board when the judgment was confessed in favor of Chamberlain, and when the lease was given to him. The lease was given previous to the judgment. The lease was given during the pendency of the suit with Cleveland. I think Mr. Chamberlain first proposed that the lease should be given to him as the embarrassments of the company grew more apparent. Mr. Chamberlain, of course, grew anxious about his pay. When I went home in the early part of September, 1857, he expressed much uneasiness as to his security. He urgently requested of me to make him some specific security. This was about the first of September. He explained to me, at considerable length, the danger
that he might not receive his pay for the work he was then
446 doing; that he was expending a good deal of money, had a
great many men at work, and had drawn largely on his means and the means of his friends. The company was largely in arrears to him on the contract. He had heard of dissatisfaction on the part of

Vose, Livingston & Co., of whom he had purchased the iron, on account of not making payments to them, and that they threatened to reclaim the iron. He wanted some assurance and security that he would receive his pay at some time, or else he would have to suspend his operations. He stated to me that he had urged this very strongly on the directors. He urged it very strenuously on me. He seemed to think he was incurring too large responsibilities on uncertainties. I told him on my part, on behalf of the company, that I thought we had financial arrangements then made, by the issue of a million of second mortgage bonds by which we could pay off his estimates, and that such security would therefore not be necessary at that time. In consideration of those views, I advised against it. I told him that although I was willing to do anything to accommodate him, I was afraid that would injure our credit and hinder us in raising funds. The result was that we did not go into it at that time. We gave him at that time, however, the assurance that if we should be disappointed in raising funds, we would give him all the security we could; that the great point with us was the completion of the road, and that we would protect him at all times as far as we could. In this he acquiesced, though urgent to the last that we should do as he desired. As we did not see fit to do so then, his parting remark to me was, that he should depend on us to see him safe against all harm. I told him that from the prospect we then had, I thought we should be able to pay him $150,000 in the ensuing month, (September.) I left here on the fourth of September for New York. When I reached there, after an absence of about three weeks, I found that our prospects for raising funds from this source was very much diminished. I think we did not, in fact, pay him that month more than $15,000. I found, as September and October progressed, that we were getting deeper into embarrassment, and that an association of bondholders was forming around us, who were thwarting all our efforts, and I saw but one way to save the road and secure its ultimate completion, which was to make this lease to Mr. Chamberlain. When I became fully convinced of this, I returned home for this purpose. I had a great amount of anxious reflection, and came fully to this conclusion. I laid views before the board, who had come to the same conclusions before, and we went on and made the lease at the time and in the manner that the records show.

Question. What dangers did you propose to guard against by giving the lease?

Answer. I have already explained that fears were entertained of combinations of bondholders being formed sufficiently strong to
447 counteract our efforts in raising money to meet our liabilities and progress with the work, and that danger of this had become so imminent, and was growing so apparent, that the only remaining hope for the continuance of work on the road seemed to be, to give Mr. Chamberlain such a lien upon it as would assure the payment of what had already become due for work then done, as well as for that to be done, under this contract. This was the great and paramount danger which threatened to overwhelm the company, but there were other and nearer dangers threatening us, more immedi-

ately against which it was equally necessary to guard. There had been one or two instances of attachment sued against the company, for indebtedness to the amount of a few hundred dollars; and it seemed quite evident that by such means the company's resources would soon be so exhausted as to render it entirely powerless for further progress. The floating debts of the company amounted to perhaps some $300,000, in small sums varying from a few dollars to some hundreds, and in some cases to a few thousands. If sued under attachments, under the influences of panic, as no doubt they would have been, would effectually arrested the progress of the work and prevented the completion of the road. These were the dangers against which the board felt it to be its duty to guard by every lawful means in its power.

Question. When you represented the dangers to the directors on your return, what dangers did you state? and how did you propose, through the lease, to guard against them?

Answer. This question is substantially answered by the foregoing answer. The board of directors fully comprehended the embarrassments of the times and the dangers which threatened a suspension of work on the road without being communicated by me, and some of the directors had been anxious, as a safeguard to the company, to make the necessary liens at a much earlier period, and doubtless would have authorized it to be done in the latter part of August or first of September, except for reasons assigned by me against it at the time.

Question. At the time of giving the lease was the amount of indebtedness to Chamberlain known?

Answer. No.

Question. At the time was it agreed that judgment should thereafter be confessed?

Answer. I do not think there was any distinct agreement that a judgment would be confessed by the company for the amount due Chamberlain at the time of making out the lease, but it was the interest of the company to give him a perfect lien upon the road and its earnings, to secure all indebtedness, past and accruing, under his contract until the whole should be paid; and such was one of the conditions of the lease, without reference to the specific amount.

Question. Why did you not wait before giving the lease
448 until you had ascertained the indebtedness?

Answer. Because the amount of indebtedness at that or any other particular time was not a necessary element in the lease.

Question. When did you first agree to give a judgment to Chamberlain, and why did you conclude to give it?

Answer. There was no agreement, properly so speaking, to give Mr. Chamberlain a judgment, except the order made for that purpose by the board. This was on the day and at the time when the papers for that purpose were made out, which date I do not remember; but it can be ascertained by reference to those papers. The reason why this order was made I understood to be in consequence of a doubt entertained by the counsel of Mr. Chamberlain whether some legal difficulties might not be raised as to his lease lien covering the iron not laid down on the road; and to avoid all questions in this respect, and, in fact, to render the transaction as regarded a lien as perfect as

possible, and thereby accomplish the ends proposed to be secured by it, it was deemed advisable by the board, under advice of counsel, to give the force of a judgment in support of the previous lien for the amount then reported to be due.

Question. Had you then ascertained the indebtedness, and how? Have you not stated that it was not then ascertained?

Answer. At the time of giving the judgment the amount due Mr. Chamberlain had been ascertained by a report from the chief engineer, Mr. E. W. Woodward, whose statement was considered conclusive by the company. I have never stated that the amount then due was not then ascertained. This question is propounded, as I understand, in consequence of a statement made by Mr. Cleveland, complainant in this pending suit, before the late committee of investigation of the legislature, and to his counsel. In this statement Mr. Cleveland has fallen into several mistakes, the most essential of which is in relation to the matter of this question, and is as follows: "Chamberlain, he (Kilbourn) said, took the lease and was gone into the country some two days; then returned and told him (Kilbourn) that he (Kilbourn) had *had* made the lease to him to prevent Cleveland from getting possession of the road; that he had consulted with his counsel, and that they had advised him that the lease would not prevent Cleveland or any other judgment creditor from getting possession *possession* of the road, except they fixed up a judgment of some kind in his (Chamberlain's) favor, and then (as Mr. Kilbourn then told me) the company confessed the judgment to Chamberlain, without knowing how much they owed him, to cover whatever it was when they found out. They had not then got their estimate, but that he had not at the time any idea that the company owed Chamberlain any such amount as the judgment."

In this statement Mr. Cleveland's mind was in a singular
449 state of confusion. He represents me as stating to him that Mr. Chamberlain went into the country, and after two days returned, made certain communications to me of insufficiency of lien under his lease, &c. The fact was, that Mr. Cleveland told me that he had understood such to be the fact, and asked me if it were not so. This is not very material except as showing the *animus* of his testimony on that occasion, and may explain the material error into which he falls in the latter part of his statement. I never stated to him "that the company confessed the judgment to Chamberlain without knowing how much they owed him." The amount had been ascertained before the judgment was confessed, and I so stated to Mr. Cleveland clearly and distinctly, in the conversation to which he alludes. He evidently got confused in his mind the statement to that effect in reference to the lease, and applied it to the judgment.

The foregoing questions and answers are objected to by Mr. Emmons, because Mr. Chamberlain is not connected with the motives of the company, nor affected with notice thereof.

Question. Was Mr. Cleveland's claim included among those impending in view of the board? (Objected to.)

Answer. It was, I think, in common with others. No such exclusiveness, however, was given to it as Mr. Cleveland states in his tes-

timony before the investigating committee. I don't think Cleveland's impending judgment had any particular influence at that time. I can't answer for the rest of the board. The New York reasons had much the most influence on my own mind. I can't say that the matter was hastened by the pending claim of Cleveland. I don't know that it was. It was rather a hurrying time with us; other matters were pressing. I was only temporarily here, and in a hurry to get back to New York. My present impression is that Mr. Chamberlain first suggested the judgment to me. It was founded on the opinion of his own counsel. It had particular reference to the iron which Vose, Livingston & Co. were endeavoring to reclaim, he understood. I had simply one idea—to secure the road. I wanted first to secure the completion of the road; second, to protect the Wisconsin stockholders. These were the paramount considerations in my mind. Next my desire was to secure Mr. Chamberlain. This is the order of motives in my mind. I supposed Mr. Chamberlain's would be classed differently. He wanted, I suppose, first to secure himself. In order to secure these objects, I deemed it certainly necessary to have the lease and the judgment before Cleveland should get a judgment. Doubtless I explained my general views to the board. How far I mentioned them in detail I can't say. I can't say precisely what motives may have influenced them. Mr. Cleveland's claim may have been mentioned in the conversations between him (Chamberlain) and me. There were some attachments then, and there was fear of more attachments every day. They would have hastened our operations without Mr. Cleveland's claim. Mr. Cleveland's claim may
450 have been spoken of between me and Mr. Chamberlain, but not in the way Mr. Cleveland has stated, or I should have remembered it, for I would not then have admitted to anybody that these motives influenced us to make the lease and confess the judgment. No such view was presented between us. The iron was to be devoted to the use of the road, and Mr. Chamberlain was to have the use of the road to secure him. The lease shows all this. There was nothing said between Chamberlain and me, I think, as to whether the iron was to be sold for his benefit, or laid on the road. I understood the agreement to be that the iron was to be laid on the road, and secured to the road for that purpose. This I understood was previously provided for in the lease. This was the scope and object of the arrangement with Chamberlain, I understood. I don't remember by whom the first lease was drawn—I presume by Mr. Stevens or Mr. Palmer. Mr. Chamberlain did not tell me, after the execution of the lease, whether he was satisfied. I suppose he thought it was sufficient. I don't think he stated to me what attorney advised him that a judgment was necessary. It was within a short time—two or three days—after the lease was executed, that the judgment was entered; the lease was executed within a month after I heard of it. Mr. Chamberlain proposed a lease by way of security, or to have control of the road—to have the revenues of the road under his control. This he wanted before the fourth of September, when I went to New York. He wanted a mortgage on the revenues of the road—possession of them, or a lien of them—until he should get his pay. After my return, the pa-

pers were executed as soon as they could be made without any delay; in two or three days, I presume. I think we directed Mr. Woodward to make an estimate of the amount due Chamberlain before the lease was made, but that he had not had time to make it when the lease was made, as far as the lease was concerned. I considered the amount of indebtedness of no consequence, and I think nothing had then been said about a judgment. Other members of the board may have spoken about a judgment. I speak only of what I know myself. Most of the conversations I think were between other members of the board and Mr. Chamberlain. I was away a good deal, and he was in constant intercourse with other members of the board. Most of my impressions may be rather the results of conferences than of any conversations held by me. I have been an engineer and practically acquainted with railroads.

Question. How long would it take a chief engineer to make the surveys and estimates necessary to determine the amount of the work that was settled by the judgment to Chamberlain? (Withdrawn.)

I left the business at home in the hands of Messrs. Goodrich & Kneeland. I was always from home a good deal, and attended to the business away from home mostly.

Question. Do you know, or have you any grounds for believing, and, if so, what, are such grounds, that Mr. Goodrich, or Mr.
451 Kneeland, or any other director of the company, had any interest in any contract between Mr. Chamberlain and the company, or in the profits or proceeds of any contract?

(Objected to as incompetent; secondly, that it calls for incompetent evidence; thirdly, that it calls for immaterial and irrelevant evidence; fourthly, that it is a supremely impudent question for the complainant in this suit to put in the mouth of his counsel.)

I have no knowledge of any such interest, and I have no grounds for believing that any such interest exists.

*Cross-examined by Mr. Emmons.*

Question. In what you have stated to be your motives in making the lease (so called) and the confession of the judgment, was Mr. Chamberlain anywise privy thereto, to your knowledge, any further than an effort or a manifested design on his part to secure a *bona fide* debt due to him from the railroad company?

Answer. I don't think that I explained to him my motives; nor do I think there was any such explanation of motives between him and the company in discussing the matter of those securities; in other words, I do not think our motives were in any way made an element of the arrangement. So far as anything was said to me by Mr. Chamberlain, it was evident that his motive was to secure payment for the debts due and accruing to him by the company; I allude to the term "accruing indebtedness" only to what is expressed in the lease. The judgment was for a specific amount then due. I don't remember on what day the lease was executed. The chief engineer made a report of the amount due to Mr. Chamberlain, on which the board acted. I presume he had made monthly estimates.

I never had anything to do with those. The amount reported due

was the basis on which the judgment was confessed. So far as I knew, the amount reported was correct. If I had not supposed so I would have been the last to sanction the arrangement. The estimate was carried to the credit of Mr. Chamberlain and a balance struck by a deduction of previous payments, and the amount due to Mr. Chamberlain thus ascertained from our books.

*Re-examined.*

The usage is for each assistant on each portion of the line to make up his monthly statement or estimate. I don't know whether the amount found due to Chamberlain, and for which judgment was entered, exceeded the aggregate of the previous estimates, deducting therefrom the amount previously paid. The leading object with me and, so far as I know, with the other directors, was the completion of the road. The understanding, so far as I knew, was that the contract between the company and Chamberlain was not abrogated by the lease. The judgment was not in derogation of the lease, but to carry out the objects of the lease.

Question. Was there any understanding at the time that
452 Mr. Chamberlain proposed that the judgment should be given to him, that it should be used in any way inconsistent with the completion of the road?

Answer. No. I had heard, prior to the conversation between Mr. Chamberlain and me, two months prior, that Vose, Livingston & Co. were going to attempt to reclaim the iron. I heard it in our office in New York. I think the commencement of that agitation was as early as the beginning of August, I don't know but sooner. Probably Mr. Chamberlain's object in proposing the judgment was not only to protect him against Vose, Ludington & Co., but also against Cleveland's claim.

Question. Will you state whether, by virtue of the prior contract with Mr. Chamberlain, he, upon the work being stopped, was entitled to any damages, and whether the change in the contract and the allowance of $200,000 was in good faith or a violation of the preceding right of the parties? (Objected to by Mr. Emmons as irrelevant and immaterial; also, because the counsel for the complainant is trying to borrow a legal opinion from the witness.)

Answer. The allowance, so far as the board was concerned, I have no doubt was made in good faith; whether it was in violation of the right of the parties under the contract I am not able to state. He asked us $300,000 and we offered him $150,000, in consideration of his services in running the road and managing it, for which it was not expected that he would charge anything. It was, after considerable discussion, resolved to give him $200,000. With that he was not satisfied. He claimed that the company had no right under the contract to suspend the work unless they had previously complied with the contract on their part, by paying up all the amounts due on it. I desire to correct the report of my testimony in this, when I answered that I deemed it necessary to have the lease and judgment before Cleveland should get a judgment. I added, in connection and by way of qualification, that I did not then expect that Cleveland was going

to get a judgment, and that I had been assured by my counsel before then, and I was then and afterwards assured, that Cleveland would not get a judgment against us of any consequence, and that we should probably get a judgment against him. I think that my answer, as taken down, does not convey correctly the impression that it made or was intended to make.

Further examined by the complainant's counsel.

We did not have specific reference to Mr. Cleveland's suit in the dispositions we made. That was included among the other debts.

*Cross-examined.*

I mean *the company* by "Co."

*Re-examined.*

453 In our conversations with Chamberlain the principal matter talked of was his security. It was also mentioned and understood that he should go on with the work.

Question. Did not Chamberlain know at the time of this lease and judgment, that your motives in part was to guard against the dangers you have spoken of, to protect the interests of the company, insure the completion of the road?

(Objected to.)

Answer. I don't think I explained to Mr. Chamberlain anything about my motives in that respect. The subject discussed between him and me was the security for his benefit.

Question. At the time of this lease and judgment, did not Chamberlain know that the Cleveland suit was on trial?

Answer. I don't know. I don't know myself that the suit was then on trial. I don't know whether I then knew it at the time the lease was made. I don't think he urged that matter as a motive. In connection with the negotiations between Chamberlain and us, in regard to giving him these securities, I don't think the Cleveland matter was specially mentioned, but I dare say that was mentioned in connection with other matters.

BYRON KILBOURN.

FRIDAY, 28*th May*, 1858.

Benjamin H. Edgerton, being duly sworn on the part of the complainant, says:

I am a civil engineer. I have been one over twenty years. I have been engaged on the Mississippi road since it was started, about nine years. I have been engaged almost wholly in Wisconsin. I have become familiar with the surface of that part of the country which I have been over. I have seen a considerable portion of the State. I have been over part of the La Crosse rout last winter. We left here about the seventh day of December last, and were on the rout until the sixteenth or seventeenth.

Question. Did you make any observation as to the ballasting between Beaver Dam and Portage?

(Objected to.)

Answer. We made only casual observations. We had no time to make accurate measurements. From Fox lake we went on foot to Beaver Dam, seven miles, and the rest of the way to Portage our observations were made from the cars. The distance from Beaver Dam to Portage is about thirty-four miles. I think I have not the minutes we made; I think Mr. Marshall took them.

B. H. EDGERTON.

Charles E. Jenkins, being duly sworn on the part of the complainant, says:

I was a director in the La Crosse road from some time in April, 1857, until some time in October, 1857. When in town, I generally attended the meetings of the board, when notified. I recollect that a contract was made by the road with Mr. Chamberlain in January, 1857.

454 Question. Will you state what you know on the subject of the negotiation of that contract, the parties with whom it was negotiated, and its adoption by the board?

(Objected to.)

Answer. I don't know with whom the contract was negotiated on the part of the board. I was one of the executive committee, but had nothing to do with the negotiation. I think the matter was reported to the board for their action. I think Mr Kilbourn was one of the most active men in pressing it on the board; I am not sure.

Question. Do you know who were the parties in interest in that contract with Mr. Chamberlain; and if you do not know, do you know any facts indicating who were? And if so, state them.

(Objected to by Mr. Emmons.)

Answer. I do not know who were the parties interested (if any) with Mr. Chamberlain in that contract. I have no knowledge of any facts indicating who were interested. I have suspicions on the subject, which have arisen rather from my knowledge of the men than from any knowledge of facts.

(The last answer specifically objected to by Mr. Emmons)

I was a member of the board, but not present when the lease was given to Mr. Chamberlain. I had a conversation with Mr. Chamberlain previous to that time.

Question. What motives or reasons were spoken of (if any) for giving the lease?

Answer. To secure Mr. Chamberlain for moneys expended on the contract.

Question. What other motives were assigned?

Answer. The general reason was this: The affairs of the company were getting very much embarrassed, and there was a large amount due to Mr. Chamberlain, and he desired to be secured, and proposed to be secured by taking a lease of the road, to which I assented. On reflection, for reasons which I need not detail here, I determined not to attend the meeting of the board held for that purpose, and did not attend.

Question. Was any allusion made by Chamberlain to the suit of Cleveland and the other liabilities of the company?

Answer. There was a general reference to the fact that the company was embarrassed, but I remember no allusion to any specific claim. At that time we did not think much of Cleveland's claim. This was some time before the lease was given; I think before Kilbourn came home from New York.

Question. Was not that—the embarrassment of the company—assigned as a reason why the lease should be given?

Answer. Yes.

Question. Was anything said as to the protection the company would receive from the lease, or the interest it had in giving the lease, or about the company having the road completed?

Answer. I think not. My conversation with him was brief.

455 Question. Who were the principal controllers of the affairs of the company at that time?

Answer. Kilbourn was the chief man. To all intents and purposes, I regarded him as the company; Mr. Kneeland and Mr. Goodrich were next, and were about on a par.

Question. Were you present at the time the authority to confess the judgment was given by the board?

Answer. I was.

Question. Will you state the motives and objects of confessing that judgment as urged at that time?

Answer. The only object I knew of was to secure Mr. Chamberlain.

Question. Was anything said at the time about protecting the iron by means of the judgment?

Answer. I am not positive, but I think there was. I think the object of the judgment was to give Mr. Chamberlain the first lien on the road and its property, subject, of course, to the first mortgage.

Question. Was it not then understood that Mr. Chamberlain was going forward in the completion of the road?

Answer. I think it was.

Question. Was it not the understanding that Chamberlain should use the judgment to protect the iron from the claims of other creditors, so as to secure it to be laid down on the road?

Answer. I have no recollection of any such object being stated.

Question. Did he not take the lease as security?

Answer. I remember stating to Mr. Chamberlain myself that I thought the lease was insufficient; that I thought he also ought to have a judgment as security. I was desirous to see him secured beyond a contingency. I presume his counsel had suggested it to him before.

Question. Was not one reason why you preferred to secure Mr. Chamberlain above all other creditors, because that would secure the completion of the road?

Answer. That was one reason with me personally. Besides, I thought that he had the best claim to be secured. I felt personally very friendly to him, and desired to see him secured.

Question. Was the amount for which the judgment was given actually due to Mr. Chamberlain when it was entered?

Answer. That I don't know.

Question. Prior to that time, and in the month of September, had the officers of the company stated any other amount as due to Mr. Chamberlain ; and if so, what amount ?

Answer. The only knowledge I have on that subject is derived from hearsay.

Question. At the time of the conversation, prior to giving
456 the lease, was any sum stated by him as due to him ?

Answer. I think not.

Question. How did the board arrive at the amount for which judgment should be entered ?

Answer. From estimates and statements submitted by the chief engineer, and I think by the secretary or by Mr. Goodrich. A paper was brought in at the meeting of the board containing some figures and the sum total of the amount due to Mr. Chamberlain.

Question. Was there any particular examination of the items of that account ?

Answer. I made none. I did not see any, except by Mr. Kilbourn and Mr. Goodrich, who made some examination of the statement. I knew nothing about the matter any way. I remember Mr. Kilbourn expressing some surprise at the amount exceeding his anticipations, and he and Mr. Goodrich examined that paper. They did not examine any other papers or vouchers that I know of. They might have done so.

Question. Was there any understanding at the time, that this was only a settlement for the time being, and that the true amount should be afterwards adjusted ?

Answer. No ; Mr. Chamberlain claimed this sum to be due to him. There was a bonus allowed him for something which it was proposed to include in this judgment, but he would not consent for fear it might invalidate it.

Question. Was Mr. Chamberlain present at that meeting ?

Answer. Part of the time ; I think not all. The amount of the bonus was large, I think $200,000, but I am not sure. Mr. Chamberlain objected to have that go into the judgment ; he said he wanted the judgment for the amount due him.

Question. What reason did he give for a doubt as to the safety of including the $200,000 bonus ?

Answer. I don't remember what the bonus was for. A portion of it was for something to be done thereafter, I think. A doubt was expressed by somebody. Mr. Chamberlain, or perhaps, myself, whether the judgment would be valid if anything more was included in it than the amount then actually due. The judgment was not included because the board and Mr. Chamberlain desired that the judgment should be valid in all respects.

Question. Was the board unwilling to include it, or Mr. Chamberlain unwilling to receive it ?

Answer. He was unwilling to receive it. I think the board was willing to include it. I, personally, was not ; Mr. Palmer, I think, concurred with me. Mr. Kneeland was not present. No vote was taken on the question, and I don't know how the majority stood.

457 Question. Were any other objections urged to it than it envalidating the judgment?

Answer. I don't remember any other grounds.

Question. Was Mr. Samuel Brown present at the meeting?

Answer. Yes; Mr. Brown and Mr. Vliet were both present.

Question. Did you know that Mr. Chamberlain had received $200,000 in bonds, or was anything said at that meeting about his having received it?

Answer. No.

Question. Were any parties besides Mr. Chamberlain interested in that bonus, except himself?

Answer. I have no knowledge or information on that subject.

Question. Do you know any facts tending to show such an interest?

Answer. I can't say that I do. I know of no fact which would go to establish that any director of the board was interested with Mr. Chamberlain in that judgment or the bonus talked of at the time.

Question. Do you know of any director of that board having received, directly or indirectly, from Mr. Chamberlain, or any other person, any consideration whatever for any matters growing out of the Chamberlain contract with the road?

Answer. I do not.

*Cross-examined by Mr. Emmons.*

On reflection I can state what the bonus was for. The consideration of it was as expressed in clause four of the contract made by the company and Mr. Chamberlain, dated twenty-sixth of September, 1857. I think that the objection to including that $200,000 in the judgment came from Mr. Palmer, and that the reason why it was not included in the judgment was that the bonus included prospective damages as well as past.

I could have answered more clearly on this point had I then read the contract, which I have since looked at. I mean the contract contemporaneous with the lease.

*Re-examined.*

Question. At the time the lease was given, were there seven directors in Milwaukee without you?

(Objected to.)

Answer. I don't know.

Question. At the time the confession of judgment was given, were the seven directors present?

(Objected to by Mr. Emmons, but not by Mr. Palmer.)

Answer. Yes; I feel positive in my own recollection that but seven were present.

CHARLES E. JENKINS.

Edwin H. Goodrich, being duly sworn as a witness on behalf of the complainant, testifies and says:

458 I have been a director of the La Crosse road since it was incorporated up to the first day of April last. I recollect the

fact of Mr. Chamberlain's contract in January, 1857. I was then a member of the executive committee, and remained so until about October, 1857.

Question. Did you, as one of the executive committee, take part in letting the contract to Mr. Chamberlain?

Answer. I did as a member of the board, or of the committee. I don't know whether the board or the committee let the contract.

Question. Are you aware that since then there have been various modifications of that contract?

Answer. I am.

Question. Have you at any time, directly or indirectly, had any interest in or expectation of benefit from any contract or modification of a contract, or arrangement, or agreement, or understanding between the La Crosse and Milwaukee Railroad Company and Mr. Chamberlain?

Answer. I have not.

Question. Have you at any time received any money, property, right of action, or other valuable thing from Mr. Chamberlain, or from any other person acting for Mr. Chamberlain?

Answer. Yes; I have.

Question. For what?

Answer. As a salary for my services in managing the La Crosse and Milwaukee railroad since the execution of the lease.

Question. Have you never received anything else?

Answer. I have not.

Question. Have you any promise or agreement for anything (further than this salary) legal or honorary?

Answer. I have not.

Question. You have answered to the third recorded question that you have no interest, and have had no interest and no expectation of interest in such contract, agreement, or understanding. I now ask you if any member of your family, any relation, or any person for you has any such interest or expectation?

Answer. Not to my knowledge.

Question. Do you know, either from conversation with Chamberlain, or with any other director, or from any other source, whether or not any person besides Mr. Chamberlain is interested in the contract made by him with the La Crosse and Milwaukee Railroad Company?

(Objected to by Mr. Emmons, so far as relates to conversation with others than Mr. Chamberlain.)

Answer. I know by common report that Daniel L. Welles is interested in the contract. I don't know of any other person.

459 Question. Have you yourself, or do you know of any other person besides Mr. Chamberlain, who has or has had any interest, direct or indirect, any hope of reward, or expectation of benefit, growing out of the contract or modification of contract of Mr. Chamberlain with the La Crosse and Milwaukee Railroad Company, or growing out of the profits, or moneys, or bonds, or stocks to arise out of, or to be received in consequence of the contract, either by virtue of any arrangement, understanding or agreement, express or implied, either with Daniel L. Wells, or with Mr. Chamberlain?

Answer. I do not.

Question. Were you a member of the board at the time the judgment was confessed?

Answer. I was.

Question. How many directors were present at that meeting? Were their names recorded, and who were they?

Answer. I think there were eight. I don't know whether their names were recorded. They were, Vliet, Brown, Palmer, Strong, Jenkins, Hadley, Kilbourn, and myself. That is my recollection.

Question. At the time of giving the lease (so called) how many directors were present and voting on that proposition?

Answer. I can't answer that question. I was present. I can't recollect the names of those present.

Question. Do you recollect the time of the giving of the judgment?

Answer. I do.

Question. When did you commence acting under Mr. Chamberlain and receiving a salary, as you have stated?

Answer. On the first day of October last.

Question. What salary do you receive?

Answer. Three thousand dollars.

Question. When did you make that arrangement with Mr. Chamberlain?

Answer. I never exchanged a word with him on that subject. I fixed it myself. I fixed the salary of all the men on the road, and thought if I did that I was competent to fix my own. It was credited to me on the books.

Question. Who asked you to remain there under him as the superintendent?

Answer. I don't know that any one did.

Question. Had you, prior to that time, been acting as superintendent in behalf of the company, employing the men, &c?

Answer. I had.

Question. Then did you continue, subsequently, discharging the same duties?

Answer. I did.

Question. Without any agreement or understanding to that
460 effect between you and Mr. Chamberlain?

Answer. No. I did not continue without such understanding.

Question. When did you first have this understanding with him that you should so continue?

Answer. On the first day of October.

Question. Did you have any talk with him on the subject before that?

Answer. I did not.

Question. Prior to that time, (October 1, 1858,) did you not have an arrangement with him, Mr. Chamberlain, by which you were to have five thousand dollars a year? Have you not so stated?

Answer. I never have.

Question. At the time he requested you to continue in the superintendence of the road, what did he say to you?

Answer. He did not request me. I did not say he did. I said there was an arrangement.

Question. What was the arrangement?

Answer. I said to him that I would like to continue in the management of the road. He said I could do so for the present. That is all that ever passed between us, then or before, or since on the subject. I suppose I am like any other employee on a railroad, there during good behavior.

Question. Was the supplement—the indorsement on the contract of the thirtieth of April—made by you or by the executive committee?

Answer. It was made by the executive committee.

Question. Which members of the executive committee assented to it?

Answer. Garrett Vliet, Moses Kneeland, and myself. The chief engineer was also present.

*Cross-examined.*

That modification of the contract was signed on the day on which it bears date. I don't recollect whether that action of the committee was confirmed by the board. They recognized it and acted upon it. The chief engineer made estimates on it, and payments were made on it. No work had been done on that tunnel until after the date of the contract, the thirtieth day of April. The engineer made monthly estimates. I can recollect who were at the meeting when the judgment was confessed, and not who were present when the lease was executed, because the judgment was entered, and it was authorized after the first of October; and I wanted to be excused from acting at that meeting of the board in this matter, on account of my relations with Chamberlain, having been then employed by him as I have stated.

EDWIN H. GOODRICH.

FRIDAY, 23*rd July*, 1858.

Thomas E. Peverley, sworn for the complainant, says: I am a civil engineer; I have been one for ten or eleven years. I have been
461 on railroad work most of the time when I have been doing anything. Mr. Marshall and I were partners as civil engineers last fall and winter. He and Mr. Edgerton and myself have made surveys over the La Crosse railroad together at the request of Mr. Cleveland. It was in the latter part of November or the first part of December. We made minutes of the results of our survey as we went along. I kept the minutes of the survey of that part of the road that I went over. Those contained the results of my own work. Mr. Marshall had a separate book. I don't know whether Mr. Edgerton also kept a book or not. I was only with them one day and part of another. I figured up in my book the result contained in it, and I think we all figured together. I put down the number of yards that I measured. Mr. Marshall and I went once with Mr. Cleveland, without Mr. Edgerton. We kept a book then. I don't know who has it. I have not got it. I have since that time removed from Milwaukee to Chicago. I did not take that book with me. The last time I saw my book of minutes was about the middle of December.

I did not take it with me to Chicago. The last I knew of it it was here in the office, in our office. I had a conversation with Mr. Cleveland about those minutes when he came down to subpœna me. I did not tell him that I had given them to somebody to keep for me. I told him I did not know where they were. I did not tell him he could not have those minutes until he paid me for my work. I have not the remotest idea where that book is. I have not seen it since I left here last spring, and not since last winter that I know of. I threw it down on a table in my office, where it lay with half a dozen others looking like it. I have not seen it since then that I know of.

Question. Did you examine the ballasting from Hartford to Fox Lake and from Fox Lake to Portage, or any portion of it on the road, with a view to see how much ballasting had been done?

(Objected to by counsel for Mr. Chamberlain as irrelevant and as improper, because the testimony designed to follow it, as stated by complainant's counsel, is incompetent.)

Answer. I think we did. It was the upper end of the road. I don't recollect the names of the towns. It was at Fox Lake and on both sides of it. We examined the ballasting west from Portage. I think as far as the iron was then laid. I can't now undertake to say what amount of ballasting had been done west of Portage. I did not have a copy of the engineer's report filed in this case as part of an answer. I saw such a copy.

Question. How did the amount of ballasting done compare with the statement in the copy?

(Objected to by Mr. Chamberlain's counsel, for the reason before given, and because it does not appear that the witness ever saw the original on file or knows this to be a true copy.)

462 Answer. I don't recollect. I don't know what Mr. Cleveland's object was in having those surveys made; I suppose it was to procure testimony to be used in this case I did not inform Mr. Cleveland that my memory was so bad that I could not afterwards recollect the results. Mr. Cleveland paid us a hundred and fifty dollars for our work. This affidavit now shown to me (being one filed in the cause December 19, 1857) was made by me among others.

Question. Is that affidavit true?

(Objected to as irrelevant and immaterial.)

Answer. It is; I see what is stated here; I can't say anything more than is stated here; I can't undertake to prove what is stated here; I have no memory on the subject independent of what is stated here; when this affidavit was made out it was made out correctly; I could not remember without this; this says one-third of the ballasting was done on the ten miles next east of Kilbourn city; I can't tell without this; I should take this word for word; we did the work in the early part of December; this affidavit was made immediately after we returned; no ballasting was done west of Kilbourn City; it says here (in the affidavit) from a point seven miles west of Portage to Portage, and from Kilbourn City six miles west; the track is ballasted as far as is needed, but the material to ballast was obtained on the same section. The amount of ballasting on the ten miles first spoken of did not exceed eighteen thousand cubic yards, it says in the affi-

davit; west of Portage no ballasting was done, except what I have stated, so I find in the affidavit; it was our opinion at the time, I suppose, that not over one hundred thousand yards of ballasting was done between Beaver Dam and Portage City. We went over the road to make an estimate of this; we rode part way and walked part way. I don't remember the town where we got out to walk; I think it was Fox Lake.

Question. What is a fair price for the ballasting on the division from Portage City to Beaver Dam, what was at that time?

(Objected to as irrelevant and immaterial.)

Answer. I suppose twenty-five or thirty cents; we then estimated it at twenty cents; I should think that was a fair estimate, but there are a thousand things to be taken into account. I think we examined the embankment at Fox Lake. It is put down here at fifteen thousand cubic yards, unless there has been a material settling. I thought at the time that twenty cents was a fair price per cubic yard. I won't undertake from anything outside of this, from mere memory, to change anything in this affidavit. We examined the solid rock from Portage City to Lisbon; does not exceed twenty-one thousand and thirty-nine cubic yards. The loose rock does not exceed fifty-three thousand six hundred and thirty-two cubic yards. The grading from Port-
463 age City to Lisbon would not exceed fifteen thousand cubic yards per mile. Beyond New Lisbon about three miles and a half of grading was done, which would average not over five thousand cubic yards to a mile. I was up at the tunnel once before; I was not there with Marshall and Edgerton the second time. On the west side of the tunnel the rock excavation was hard down at eight thousand five hundred and three yards. I did not measure either side of the tunnel approaches. Marshall and Edgerton measured them. There was not to exceed one mile and thirty-six hundredths of side track west of the tunnel, where part of these measurements were made. I did not make all of them myself. There are only two cattle guards, made of fine railroad ties and two by four strips laid across the top. The entire lumber, board measure, in the two would be about one hundred feet. Ten dollars for the two would be a full price; so it says in the affidavit. There was one highway bridge over the track, composed of about fifteen thousand feet of lumber, board measure, and worth in labor and materials about four hundred dollars. There are two under passages, costing in labor and materials about one hundred eighty-seven dollars each, and one arched passage-way, containing about eleven hundred yards of masonry, which would fairly cost about forty-four hundred dollars. All the other crossings would not exceed fifty dollars. There were bank walls only in three places, amounting in the aggregate only to three hundred and twenty cubic yards, which, at three dollars per yard, amounts to nine hundred sixty dollars. The entire extra haul, beyond five hundred feet, between Portage City and the tunnel was thirty-four thousand three hundred and fifty yards, for distances varying from one hundred to two thousand feet, amounting, at the contract price, to 2,353. Between Portage City and the tunnel, aside from the forty-six miles graded, the grubbing and clearing does not exceed one mile. I was over the road beyond the tunnel; it says

here does not exceed twelve miles and a half. I have nothing to say to change this in any way. This is as near as I can now recollect the true state of facts. I don't recollect anything more than that I gave the min*its* in at that time. I can't from memory alone now say that this is true; nor I can I add to it nor take from it. Between Lisbon and La Crosse the whole amount of excavation, exclusive of the tunnel approaches, does not exceed seventy-eight thousand eight hundred and thirty-five yards of earth, and ten hundred and eighty-six yards of rock. There are 110½ yards of bridge masonry, and ten yards of culvert paving, and an extra haul of 6,432 yards, amounting, (for the haul,) at the contract prices, to $169 69; also 432 feet of timber, worth about one hundred and eight dollars There are also 107 yards of culvert masonry; also thirty yards of stone delivered for culverts That constituted all the work west of New Lisbon. I went over this with
464 the honest desire of ascertaining the entire amount of work done. I gave in certain sums at the time I made this affidavit. I swore then to the sums I believed correct.

Question. Do you now believe those sums to be correct?

Answer. I have no reason to suppose otherwise. I have not received from the defendants or any or either of them any money or valuable thing whatever or the promise of it.

*Cross-examined by defendant's (Chamberlain's) counsel.*

I do not know who all of the defendants are. I do not know any of them, that I know of. I know Mr. Chamberlain by sight only. I never spoke to him in my life. I do not know Mr. Kneeland or Mr. Ludington even by sight. I do not know Mr. Kilbourn, and never saw him, that I know of.

I was engaged the first time three days in making examination. We were engaged in all, in both examinations, about two weeks, I think, including the time spent in going and returning. In my testimony to day, as to quantities and amounts, I do not speak from present recollection. I have only read from the documents, which I once signed, the amounts there mentioned, which at the time I signed the paper, I believed to be correct, and I know nothing to the contrary now. I do not pretend to speak from any present recollection of the matters. We arrived at the quantities of embankment, excavation, and ballasting, by measuring, sometimes from the bank and sometimes from the borrowing pits. It is hard for me now to recollect the number of miles we examined in all, as it was in scattered pieces. The second time I went through with Mr. Cleveland, we began (Mr. Cleveland & I) west of Sparta. I worked towards La Crosse first; when we had got that done, we came back and worked this way from the point west of Sparta where we had begun. We had a team and sometimes rode, sometimes walked. We walked as we measured, and we rode from point to point where work had been done. We followed the public road. We could see where the work was done. The railroad was not all the way in sight of the public road. We inquired to ascertain wherever work was done. We made inquiries as to where work was done, and examined wherever we

could hear of work being done. We had to inquire of others to ascertain where the line was in places where no work was done. If we were correctly told, then there was little or no work done that we did not see. If we were not correctly informed where the line was, there might have been miles of work done that we did not see. The work was done only in patches, and where no work was done we were compelled to rely on information from others to ascertain the line of the road; but so far as we could ascertain we viewed all the work done. Between Beaver Dam and Portage we measured only the road bed and none of the borrowing pits. We did not have the chance to get the results exactly accurate, which we would
465 have if we had had more time. I should be loth to say of results obtained in that time, that there was not a yard more or less done on the whole work.

Question. Are you willing to say, as an engineer, that, without the original field notes, you can go on a piece of work like that, and arrive at anything like a correct estimate of the amount of work done? I mean in the time that you had.

Answer. I should say that you could not measure it accurately. The most you could do would be to make an approximate estimate of it. You could make an estimate that you would think would be sufficient to cover the amount; you could not make a perfectly accurate estimate. Where the ground was hard you could at any time get the exact amount of work done, but if part of it had sunk, you could not tell anything about it.

*Re-examined.*

As near as I can recollect, there was a considerable part of the work of such a nature that you could make an approximate estimate of the amount of work done; of part you could not. I intended to put down what I supposed would cover it—the outside figure; it might fall below the amount I named, but it could not, as I then thought, (without having the cross-section,) very well exceed the amount I put down; I mean the cross section of the original ground, as it was before the work was done; with them I could tell exactly; without them I could only approximate. I could probably estimate an amount sufficient to cover the amount. You could not ascertain the exact surface of the ground originally, without the cross-sections. I intended to set the figures high enough.

Question. Was there any rational chance of the amount of work done exceeding the amount given by you?

Answer. I intended to get them high enough. A man might *might* doubt whether they would cover all the work done. It is a hard matter to answer whether the doubt would be rational.

*Cross-examined.*

The chief engineer who had charge of the work from the beginning, with all the notes, ought to be able to make a more accurate estimate of the work done on the line of the road than I possibly could; with these notes I could have made an accurate estimate, that I could rely

upon. I desire to say for myself that when the affidavit was made I had my note-books with me, and read off the amounts. I do not undertake to say that these figures are, or are not, the amounts I gave in them; I do not see any changes, and do not know of any; but if there has been any, I do not wish to be responsible for it. These figures in this affidavit are not in my handwriting; my signature to it is in my handwriting. If I had my book, I could tell whether
466 these amounts are the same I had then; without it, I cannot pretend to tell whether these figures are just the same as they were then.

THOMAS E. PEVERLY.

Hugh McFarlain, being sworn for the plaintiff, says:

I was, last fall, one of the directors of the La Crosse Railroad Company. I remember the fact of the lease being given to Selah Chamberlain. I had conversation with Mr. Chamberlain about the time the lease was given; it was about the time the lease was made. He said to me at that time, in reply to my question, how much the company owed him, that the company owed him between four and five hundred thousand dollars, he thought, but he could not tell exactly, and he wanted security; I was well satisfied that he got the security which he had by the lease; it is my impression, but I would not be positive on that point, that he said the company would owe him that amount (between $444,000 and $500,000) when the road should be completed to New Lisbon.

*Cross-examined by Mr. Chamberlain's counsel.*

He had mentioned to me that he ought to have security. He had applied to me, as a director, for the security, prior to this conversation. He was uneasy for some time before—for a month or two before—about his security for the company's indebtedness to him.

H. McFARLAIN.

MONDAY, 26*th July*, 1858.

Benjamin H. Edgerton, recalled for the complainant, says:

(The complainant's counsel announcing that it was intended to examine this witness upon the same subject-matter, and to the same points as are embraced in the examination of the witness Peverty, the counsel for the defendant Chamberlain, objects to all such testimony, for the reason above stated by him, and the testimony is all taken to such objections.)

Being duly sworn, he testifies: I surveyed and measured, between the seventh and seventeenth of December last, a portion of the work on the La Crosse railroad, between Portage City and the tunnel, and at the tunnel cut; our attention was only called to certain items—the rock excavation, the side tracks, cattle guards, crossings, retaining walls, extra hauls, and the gravelling at Fox Lake, (this side of the tunnel,) the ballasting, clearing, and grubbing. The first measurement we made was at the tunnel. We made 8,593 yards of rock ex-

cavation on the west side, and 11,128 yards on the east side, including some cemented sand and gravel reckoned at the same price; we at least did not separate them. This estimate of rock excavation includes both the loose and solid rock. There were also 40,242 yards of earth excavation. The tunnel had not been worked at all. These excavations were merely in the approaches. The rock was mostly sand rock, soft, but pretty hard to get out. A good deal of it would require
467 blasting; some of it, I suppose, could be got out with a pick.

Question. What would have been a fair price for that work?

(Objected to by counsel for defendant Chamberlain.)

Answer. I should think it might have been got for seventy-five or eighty cents. I should think a fair price for the earth excavation, per yard, would be about twenty cents.

(Objected to.)

This was all the work done at that time at the tunnel and approaches. We made an estimate of the ballasting from Portage City west; about ten miles of the road from Kilbourn City east had been ballasted. The balance of the way to Portage, and also about six miles from Kilbourn City west, appeared to have been laid upon ballast grade, or the ballast was upon the same sections. This is not usually reckoned as ballast. When the material of the road-bed is suitable for ballast, ballast, of course, is not required. That is pretty much all the ballasting that was done on the road west of Portage City to the tunnel. Some little detached pieces were done, but they did not amount to much. We called it about one-third ballasted from Kilbourn City east ten miles, there being about 18,000 yards.

Question. What was a fair price for that ballasting?

(Objected to )

Answer. Twenty cents. That is what we paid on the Milwaukee and Mississippi railroad at that time. On the eastern division we called the ballasting (from Beaver Dam to Portage City) 100,000 yards. We did not have time to measure this accurately, but we thought that estimate would cover it. The distance was thirty-four miles. Twenty cents would be a fair price for that.

(Objected to.)

We did not make an accurate measurement of this, but I think we put the quantity down high enough.

There was an item also in the eastern division for filling in Fox Lake. We measured the embankment there as near as we could, and we made about fifteen thousand yards. Twenty cents would have been a fair price for that.

The next item is the solid rock excavation from Portage to New Lisbon, aside from the tunnel and approaches. There is no rock, I think, beyond Swanston. We made of solid rock 21,034 yards, and of loose rock 53,432 yards. There was no work of rock excavation done beyond New Lisbon except the tunnel approaches. We found but two cattle guards proper; they were near Portage. They were constructed of ties, with slats on the top. There might have been one hundred feet of lumber, costing, in all, perhaps ten dollars. Those were all the cattle guards there were on the road west of Portage at that time.

There was one highway bridge over the road containing about 15,000 feet of lumber.

468 There were two under crossings constructed of wood and one of masonry, arched. The highway bridge would be worth, at a fair estimate, four hundred dollars. The under crossings of wood we figured at about one hundred and eighty-seven dollars each; we measured the lumber and estimated the labor. The arched culvert we did not measure; we took the quantity as given to us by the mason; he gave it to us as a 1,100 yards, which I presume was correct. I think four dollars a yard ($4,400) would build that culvert.

There were a number of crossings on the road west of Portage, but they were common highway crossings which we did not consider extra; they are usually reckoned as part of the contractor's work.

These crossings were about at the grade, and seemed mostly to have been made by the people themselves.

There were a few slight embankments and some slight excavations.

B. H. EDGERTON.

Edwin H. Goodrich, recalled for the complainant, says:

Question. Have you ever received, or purchased, or had in your possession, any bonds or other securities which belonged to Mr. Chamberlain by virtue of his contract with the company, or which had been in his hands, or in which he was in any way interested?

(Objected to by Mr. Chamberlain's counsel.)

Answer. I delivered to him (as secretary of the company) all the securities which he had while I was secretary; I delivered, at his request, some securities to John B. Vliet and some to Mr. Alden; all the remaining securities issued by him were delivered to him, so far as I now recollect.

Question. Have you ever had any interest, by purchase or otherwise, in any bonds or other securities which had been in Mr. Chamberlain's hands, or which had been issued to him by the La Crosse Railroad Company?

Answer. I have received nothing from him; I am not prepared to answer that question until I have made some inquiries; I do not mean to say that I do recollect or that I do not recollect; I have no further answer to make now.

Question. Do you mean to say that you do not now recollect in regard to the facts inquired into in the last question?

Answer. Yes; I do not now recollect all the circumstances necessary in order to enable me to answer that question.

Question. Do you say that you do not now recollect whether or not you have ever had any interest in securities, such as are described in the question preceding this last one?

Answer. I decline to answer that question at present.

(The commissioner, at Mr. Brown's request, says that the
469 witness should answer the question, and the witness again refuses to answer the question.)

*Cross-examined by Mr. Emmons.*

I do not decline utterly to answer the question, but I merely decline to answer at present. I came here to-day on request, without knowing on what matter I was to be examined. My declination is only present, and not ultimate.

I was subpœnaed to-day at about half-past twelve for two o'clock. Mr. Cleveland told me to-day that he had a subpœna for two o'clock to-day, and took it from his pocket to read to me, when I told him I was in a hurry and could not wait, and I would come. He paid me no fees.

EDWIN H. GOODRICH.

THURSDAY, 27*th July*, 1858.

Benjamin H. Edgerton, recalled for the complainant, says:

We made the whole length of side tracks west of Portage City, one mile and $\frac{36}{100}$, when we came back. When we went out the side track had not been laid at Manston. This was aside from any side tracks at Portage City, which we assumed to belong to the eastern division. I think there were three or four side tracks at Portage City. I can't tell the length of them.

We made the extra haul west of Portage City 34,350 yards, the distance varying from one hundred to two thousand feet. We figured the expense of the extra haul at the contract price, $2,353. I forget exactly how much we made the average of the distances.

The bank walls were only those that we saw. All we could make out were three hundred and twenty yards in the whole, which we reckoned worth three dollars per yard. There was one bank wall west of Kilbourn City, about two or two and a half miles from Kilbourn City, and two east of Kilbourn City.

There was very little clearing and grubbing done from two or three miles beyond New Lisbon to the tunnel so far as we saw. We passed over the road as near as we could with a team, and crossed it in different places. When we did not follow it we inquired where work had been done. We inquired at one place whether any grubbing had been done there, and they told us about eighty rods had been done. There were forty-six miles of grading done from Portage City to three miles beyond New Lisbon. I could not tell what proportion of the distance we followed the unfinished part of the road from three miles beyond New Lisbon west. For about three miles this side of the tunnel we passed over the line, seeing the stakes frequently. Between these points we crossed the road, I can't say how many times; I should think three or four times. No work was done that we saw along there. We walked over that part of the road from Portage to the end of the grading (three miles beyond New Lisbon,) where the continuous grading was done, and measured the work. We made a calcu-
470 lation of the whole cost of the whole amount of work done on the western division at the contract prices. We made a difference between the value of the work done and the engineer's estimate of it, found in the answer in this suit, which difference was $406,068,

including the retained percentage, $477,344. In this calculation we estimated the prices at the contract rates, and the extra items we fixed at what we thought reasonable prices. We assumed that the grading would not exceed 15,000 yards per mile from Portage City to New Lisbon. We thought it would fall below that. Much of the way the grading was light, and we were confident the work would not exceed that. We made no estimate of the amount of earth to be taken out of the cut where the tunnel is. If the western division were divided into three equal sections I should think the grading would not exceed 20,000 yards per mile on that section, including the tunnel and approaches.

I did not go beyond the tunnel. That section would reach about three miles beyond the tunnel. Unless there was heavier work beyond the tunnel than I supposed, it would not exceed 20,000 yards per mile. When we went out the track was within about one mile of Manston, about thirty-five miles west of Portage; when we returned, it had got beyond Manston some. Where the materials for ballasting are on the same section it is customary to put it into the road-bed. By ballasting, we understand hauling materials by the train over the road. It is done after the track is laid. The object is to put on better materials than the ground affords, and to imbed the ties in it. I should estimate the whole cost of chairs, spikes, ties, and laying at about $1,500 per mile. I reckon 2,640 ties to the mile, at twenty-five cents apiece, amounting to 660 dollars. There would be about 5,280 pounds of spikes, at five cents a pound. There are about four thousand pounds of chairs to the mile, worth about five cents a pound. Track-laying I reckon at about three hundred and fifty dollars a mile. These are the outside prices at that time.

*Cross-examined by Mr. Emmons.*

We kept notes on this survey. I did not keep them; one of the party kept them, and two measured. We were gone from here ten days. We were about seven days in the examination. We had not access to the original notes. We had the cross sections as they were on the ground most of the way. They were standing until within a short distance of Portage City. I think there were about seven miles of the way from Portage City west where the slope stakes had not been marked.

I have not had the notes themselves with me in testifying here. I have had the quantities which we made up from those notes at a previous figuring, to the best of my recollection.

I would not state positively that these are the quantities, although I believe they are. They are contained in an affidavit made at
471 that time. I have referred to that in arriving at the quantities.

I think the handwriting is mainly Mr. Brown's. I think two or three wrote on it; Mr. Carpenter wrote some, I think. I was present when it was written. I would undertake to give a detailed statement of amounts and quantities without referring to that affidavit. I remember the distances, but I did not charge my memory with the quantities. My first experience as a railroad engineer was

in this State, on the Milwaukee & Mississippi road. It began in 1849, and continued until this time. It has been mainly on that road. I have been engaged on a road in Iowa for the last year and a half. I was not chief engineer on the Milwaukee & Mississippi road; I was constructing engineer. I had charge of the road for a time when there was no chief engineer. I made all of the original surveys of that road, with a few exceptions, from Waukesha to the Mississippi. I did not make those on the Southern Wisconsin, from Janesville to Monroe.

We always keep accurate notes on the original survey. The object of the preliminary survey is to ascertain the best route. The object of the cross-sectioning of the work is to ascertain the amount of work to be done and the cost. I did most of that on the Mississippi road. I had charge of it. The object of cross-sectioning is also to guide the workmen in doing the work. The profile shows the centre line of the road. The quantities are made up from the cross sections. I have had six or seven assistant engineers at a time on the road. The number depends on the amount of work on hand. We usually have one for every twelve to twenty miles. It is one hundred and seventy-two miles from Waukesha to the Mississippi. Some of the country is level and some pretty rough. The great majority of it is pretty level.

We were employed about the road for a year, more or less. A man with sufficient help may cross section in a day three miles, or perhaps not a half or even a quarter of a mile. It depends on the nature of the work. We could do three miles of level country, even surface. Cross sections are made every hundred feet, and sometimes more frequently. They were one hundred feet apart, on the La Crosse road. I think we had the benefit of the cross sections all the way but seven miles. We examined forty-six miles of road graded. We did not examine every one of these cross sections; there was no occasion for it.

We did not attempt to ascertain the exact amount of grading done. Where there was any extra haul or rock work done we examined all the cross sections.

We determined whether there was extra haul by the stations. There were cases where it was apparent by simple inspection that there could not be any extra haul—cases where the material had been wasted.

I only went to the tunnel. Peverly, Mr. Marshall, and a young man, his assistant, named Clark, I think, were with me. From Portage to the tunnel we rode. Then we rode back from a mile
472 this side of the tunnel to the other end of the embankment. We surveyed on our way back. The commencement of the continuous grade was about twenty miles this side of the tunnel. From there we walked back to Portage, forty-six miles. The whole distance was sixty-six miles. We were about ten or twelve hours going from Portage City to the tunnel. We went on the train to Manston, nearly. The most we did in one day of the forty-six miles was about fourteen miles. In one day we walked nineteen miles, but part of the work we had done the day before; part we did the next

day. We were four days in going over this forty-six miles. At Fox Lake we measured the length of the embankment and the depth as near as we could arrive at it. We saw in one place where the new material had been placed on the different kind of material. There was water there. Where we saw the embankment it was resting on a material that had been previously filled in, as we learned upon inquiry. I have had experience on sink holes.

We cannot, in such a case, make an estimate of the amount of the material which has gone into a sink hole by a simple inspection.

We should have to go to the borrowing pit or bore into the embankment to ascertain the amount of material put in. Usually a sink hole that has been filled shows evidence of its being a sink hole by the appearance of the earth about it. We did not bore or go to the borrowing pit. From the tunnel to the embankment we followed the line of the road as near as we could with a team. We laid the stakes on the line. They were a hundred feet apart. In one or two cases we saw some ties piled up where we did not see the stakes. Our data for the estimate we made of the value of the whole work done were our estimates of the work done and our prices. I only know the work done beyond the tunnel approaches from Mr. Peverly's statement. We were a little over half a day engaged in the survey at the tunnel and of the tunnel approaches. This was in December. The weather was not very cold. It snowed three or four inches in the night that we were at the tunnel house. There was that amount of snow on the ground when we were at the tunnel. That amount was very little obstruction to our survey. The banks were very nearly perpendicular, and there was very little snow on the sides.

We call loose rock excavation any ledge that can be taken out without blasting. To the best of my recollection the tunnel approaches at the west side were, at the top of the cut in the widest part, about seventy feet across. We could tell pretty nearly, by the appearance of the sides, what was solid rock and what was loose rock. I never saw the work about there until I was there upon this occasion. We arrived at the amount of bank wall by measuring the length, breadth, height, and thickness as near as we could ascertain the latter. I could not now state where those bank walls are
473 more precisely than I have. One, I remember, was in sight of Newport, near where a switch went off into the bank.

We assumed the thickness of the walls. The ends of the walls were visable, so that we could measure the length. There was one place where the tunnel culvert is where there might have been a bank wall which had fallen out. There was very little appearance of any, and we did not estimate any. We walked the track the entire forty-six miles.

*Re-examined.*

The affidavit referred to in my cross-examination was made by me and others. At the time it was made the quantites in the affidavit were taken from those in our note-book. The quantities were compared with those in the note-book and they agreed. I think that we followed the line on, or in sight of, it for about six miles between the

tunnel and the grading. Three miles (about) were from the tunnel this way, and three miles were from the end of the continuous grading west.

B. H. EDGERTON.

Garret Vliet, being duly sworn, (for the complainant,) says:

I was a member of the board of directors of the La Crosse & Milwaukee Railroad Company in 1856 and 1857. I do not recollect when the contract was let to Mr. Chamberlain for building the western division of that road, nor do I recollect of ever seeing the contract. I think I was not a member of the board in 1855. I was a member of the executive committee of the board in 1857, commencing, I think, in the spring. I do not remember a supplementary contract made with Mr. Chamberlain in April, 1857, in relation to the tunnel or approaches to the tunnel. I do not recollect being present at any meeting of the committee when that contract was agreed upon. It is possible that I might have been there when that contract was made, but it appears to me that I would have recollected it if I had been there. The executive committee met every two or three days. It was composed of Mr. Goodrich, Mr. Kneeland, Samuel Brown, and myself. I do not know whether Mr. Kilbourn was a member or not. He was very seldom with us. I do not know what that supplemental contract is.

Question. Did you ever officially authorize a contract with Mr. Chamberlain for excavating the approaches to the tunnel at two dollars a yard, and the tunnel itself at five dollars a yard?

(Objected to by the counsel for defendant Chamberlain.)

Answer. I do not remember of any such thing.

Question. If you had authorized such a contract during the year 1857, don't you believe you would have recollected it at this time?

(Objected to by defendant Chamberlain's counsel.)

Answer. I think I would remember it. It is possible that such a thing may have occurred, and I not now remember it, but it
474 appears to me not. The executive committee kept records of their meetings; almost always a young man, Mr. Whaling, kept minutes. Those minutes were preserved, and I think are now in the office of the secretary of the company.

Three constituted a quorum of the committee.

*Cross-examined by Mr. Emmons.*

I generally met with the executive committee. I did not have much to do about the affairs and business of the company; our business was chiefly looking over accounts. Mr. Goodrich generally had the papers prepared, and we presumed they were all right. Mr. Brown and myself lived by there, and attended pretty regularly. We held meetings two or three times a week, and sometimes once a day, when there were many accounts. I think there were five in the company. I don't know how nor where it was provided that three made a quorum. I generally attended the meetings of the committee. I sometimes missed, but not often. It would seem probable, therefore, that

I must have been there when this contract was made, but I don't remember anything about it. I remember we allowed accounts for making fence and grading. I do not remember the prices we paid, the amounts, or any of them, or the contractors' names, or any of them. I remember the accounts because we were in the habit of allowing such accounts. It is possible I may have been there when this contract was made, but it does not seem to me that in so large a matter I would be likely to remember it. I think I have talked with Mr. Chamberlain about the tunnel, and road leading to it. I think I recollect talking with him about the old plan of cutting through the hill. It now seems to me that this must have been after the contract was let. I don't know when the tunnel was agreed upon. I do not remember being present when the tunnel was agreed upon. I think the conversation was at the office where we held our meetings. I do remember talking at the same time about the depth of snow through the country, about board fences, &c., and I think it must have been in cold weather. I do not remember being present when the original contract was made. I have not now a good memory about business matters. I regret very much that it is so poor.

*Re-examined.*

My age will be seventy years next January.

GARRET VLIET.

Lockwood L. Doty, being duly sworn on the part of the complainant, says:

I am secretary of the La Crosse Railroad Company, and have been since the first of May last. I have the custody of the records of the executive committee. It is my impression that there is a package of papers, indorsed "minutes of the executive committee," in the drawer where the rough minutes of the board are kept. They are in Mr. Whaling's handwriting, and I presume have been copied
475 into the book. There is no other book of record of the committee's proceedings subsequent to seventeenth April, 1857, than this one, that I know of. It was the custom to keep the minutes of the board on loose paper, and copy them afterwards into the record book.

LOCKWOOD L. DOTY.

476 EXHIBIT No. 25.

*Abstract of monthly receipts and payments through the cashier's office, La Crosse and Milwaukie R. R., from December 1, 1859, to May 18, 1860, under agreement with S. Chamberlain, mortgagee.*

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec'r. | From freight income | 46, 664 79 | |
| | " passenger " | 13, 713 30 | |
| | " foreign tickets sold | 16, 417 21 | |
| | " express | 1, 126 03 | |
| | " bridge tolls, telegraph, sleeping car, and d'fts on other railroads | 1, 665 65 | |
| | | | 79, 587 03 |

| | | | |
|---|---|---|---|
| 1860. | | | |
| January. | From freight income | 24,832 11 | |
| | " passenger " | 8,532 70 | |
| | " foreign tickets sold | 7,643 14 | |
| | " express | 820 30 | |
| | " bridge tolls, telegraphs, and S. car | 189 30 | |
| | " S. Chamberlain | 16,675 45 | |
| | " P. Dow | 2,152 55 | |
| | | | 60,845 55 |
| Feb'y. | From freight income | 20,762 93 | |
| | " passenger " | 8,014 71 | |
| | " foreign tickets sold | 9,827 55 | |
| | " express | 881 05 | |
| | " mail | 5,917 15 | |
| | " S. Chamberlain | 5,900 00 | |
| | " P. Dow | 100 00 | |
| | " bridge tolls, sleeping car, and sundries | 542 41 | |
| | | | 51,945 80 |
| March. | From freight income | 29,502 84 | |
| | " passenger " | 11,507 03 | |
| | " foreign tickets sold | 12,694 20 | |
| | " express | 891 41 | |
| | " bridge tolls, telegraph, and sleeping car | 323 32 | |
| | | | 54,918 80 |
| April. | From freight income | 49,463 10 | |
| | " passenger " | 13,271 30 | |
| | " foreign tickets sold | 13,700 23 | |
| | " express | 890 59 | |
| | Am'ts forward | 77,325 22 | 247,297 18 |
| 477 1860. | Am'ts bro't forward | 77,325 22 | 247,297 18 |
| April. | From telegraphs, bridge tolls, sleeping car, and balances from other railroads | 1,538 32 | |
| | | | 78,863 54 |
| May. | From freight income | 28,585 69 | |
| | " passenger " | 8,007 81 | |
| | " foreign tickets sold | 1,303 55 | |
| | " express | 277 22 | |
| | " trustees acc't | 1,760 00 | |
| | " S. Chamberlain | 3,080 26 | |
| | " bridge tolls, telegraphs, and S. car | 130 67 | |
| | | | 43,145 20 |
| | | | 369,305 92 |
| 1859. | | | |
| December. | Managers' warrants paid— | | |
| | On operating acc't | 35,401 82 | |
| | " foreign balances | 12,793 00 | |
| | " back charges | 6,000 00 | |
| | " incumbrances on real estate | 1,787 94 | |
| | " right of way, eastern division | 400 00 | |
| | " " " western " | 808 01 | |
| | | | 57,190 77 |

| | | | |
|---|---|---|---|
| 1860. | | | |
| January. | Managers' warrants paid— | | |
| | On operating acc't | 30, 882 58 | |
| | " foreign balances | 17, 595 83 | |
| | " back charges | 3, 866 96 | |
| | " incumbrances on real estate | 4, 325 80 | |
| | " right of way, eastern division | 160 00 | |
| | " " " western " | 532 36 | |
| | " paid P. Dow on acc't | 1, 145 19 | |
| | " depot buildings | 1, 000 00 | |
| | " State taxes | 4, 924 54 | |
| | " rolling stock | 7, 215 45 | |
| | " P. Dow's acc't | 2, 739 91 | |
| | | | 74, 388 62 |
| February. | Managers' warrants paid— | | |
| | On operating acc't | 25, 444 53 | |
| | " foreign balances | 4, 140 50 | |
| | " back charges | 2, 461 94 | |
| | " right of way, western division | 518 13 | |
| 478 | " bridge construction | 3, 275 85 | |
| | " rolling stock | 3, 900 00 | |
| | " P. Dow's acc't | 1, 010 74 | |
| | | | 40, 751 69 |
| March. | Managers' warrants paid on operating acc't | 26, 158 35 | |
| | On foreign balances | 5, 063 15 | |
| | " back charges | 4, 648 77 | |
| | " incumbrances on real estate | 1, 091 66 | |
| | " right of way, western division | 302 25 | |
| | " trustees' 1st mortg'e for interest | 5, 037 50 | |
| | " P. Dow's acc't | 100 00 | |
| | | | 42, 401 68 |
| | Amount forw'd | | 214, 732 76 |
| 1861. | | | |
| March. | Am't bro't forward | | 214, 732 76 |
| April. | Managers' warrants paid— | | |
| | On operating acc't | 29, 555 33 | |
| | " foreign balances | 4, 835 28 | |
| | " back charges | 21, 348 89 | |
| | " incumbrance on real estate | 4, 524 00 | |
| | " right of way, eastern division | 30 00 | |
| | " " " western " | 220 00 | |
| | " depot buildings | 1, 059 14 | |
| | " P. Dow's acc't | 477 01 | |
| | | | 62, 049 65 |
| May. | Managers' warrants paid— | | |
| | On operating acc't | 14, 244 71 | |
| | " foreign balances | 9, 658 13 | |
| | " back charges | 14, 749 03 | |
| | " incumbrances on real estate | 4, 062 64 | |
| | " right of way, western division | 115 16 | |

| | | | |
|---|---|---|---|
| May. | Managers' warrants paid— | | |
| | On trustees' expenses..... | 2,198 17 | |
| | " trustees' 1st mortg'e for interest.. | 33,475 76 | |
| | " rolling stock..... | 3,080 26 | |
| | | | 81,583 86 |
| | Balance forwarded to trustees' acc't ..... | | 10,939 65 |
| | | | 369,305 92 |

479 EXHIBIT No. 26.

*Abstract of monthly receipts and payments through the cashier's office, La Crosse and Milwaukee R. R., from May* 18, 1860, *to June,* 1861, *under trustees.*

| | | | |
|---|---|---|---|
| 1860. | | | |
| May 18. | Balance from S. Chamberlain, mortgagee ..... | 10,939 65 | |
| | From freight income ..... | 38,881 82 | |
| | " passenger " ..... | 10,491 00 | |
| | " foreign tickets sold..... | 16,338 83 | |
| | " express ..... | 438 17 | |
| | " mail ..... | 605 32 | |
| | " telegraphs and bridge tolls ..... | 89 99 | |
| | " collected balances from other railroads ..... | 1,610 11 | |
| | | | 79,394 89 |
| | | | 79,394 89 |

| | | | |
|---|---|---|---|
| 1860. | | | |
| May 19. | Managers' warrants paid— | | |
| | On operating ac't..... | 35,617 53 | |
| | " foreign ticket balances..... | 1,656 80 | |
| | " back charges ..... | 3,000 00 | |
| | " incumbrances on real estate ..... | 1,031 69 | |
| | " right of way, western division..... | 98 66 | |
| | " S. Chamberlain..... | 388 84 | |
| | " State license, 1860..... | 6,654 93 | |
| | " foreclosure disbursement, per exhibit ..... | 9,893 59 | |
| | | | 58,342 02 |
| | Balance applicable to interest and other charges under the trustees ..... | | 21,052 87 |
| | | | 79,394 89 |

480 EXHIBIT No. 27.

*Abstract from the general ledger of the La Crosse and Milwaukee railroad, showing the income and disbursements of the same from December* 1, 1859, *to June* 9, 1860, *with the accounts of the trustees.*

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec. 1. | Balances due the road, realized by trustees—Exhibit 16 .... | | 515 63 |
| | November earnings paid to trustees..... | | 21,085 49 |
| " 31. | Earnings for Dec'r..... | | 44,697 50 |

| | | | |
|---|---|---|---|
| 1860. | | | |
| Jan'y. | Earnings for January | | 32, 883 56 |
| Feb'y. | " " February | | 36, 669 76 |
| M'ch. | " " March | | 44, 269 15 |
| Ap'l. | " " April | | 50, 532 26 |
| May. | " " May | | 69, 623 47 |
| June. | " " June | | 10, 284 69 |
| Feb'y. | Cash from S. Chamberlain | | 11, 460 00 |
| May. | do do do | | 14, 195 71 |
| | Sundry balances and accounts paid by S. Chamberlain, viz: | | |
| | S. Chamberlain & Co | 715 30 | |
| | Geo. Abert | 226 57 | |
| | D. W. Keyes | 230 23 | |
| | Beck & Gardner | 110 00 | |
| | Loyd & Supplee | 57 00 | |
| | Milwaukee Gas Co | 44 10 | |
| | | | 1, 383 20 |
| | Balances of ac't, Dec. 1, 1859, liquidated by operating expenses, viz: | | |
| | J. G. Inbasch | 121 80 | |
| | I. Swain | 36 10 | |
| | | | 157 90 |
| June 9. | Balances due from the road, unpaid, upon surrender to receiver—Exhibit 23 | | 44, 503 56 |
| | | | 382, 261 88 |

| | | | |
|---|---|---|---|
| 1859. | | | |
| Dec. 1. | Balances due from the road for operating expenses and foreign balances—Exhibit 17 | | 68, 789 73 |
| 31. | Operating expenses credited up for the month of December | | 28, 669 82 |
| 1860. | | | |
| Jan'y. | Operating expenses credited up for the month of January | | 26, 251 23 |
| Feb'y. | Operating expenses credited up for the month of February | | 22, 192 06 |
| M'ch. | Operating expenses credited up for the month of M'ch | | 29, 833 50 |
| Ap'l. | do do do Ap'l | | 30, 755 29 |
| May. | do do do May | | 44, 354 83 |
| 481 June 9. | do do do to June 9 | | 15, 528 93 |
| Feb'y. | Rolling stock cars | | 14, 195 71 |
| | State taxes paid | | 4, 924 54 |
| | Incumbrances on real estate—Exhibit 19 | | 16, 823 73 |
| | Right of way—Exhibit 20 | | 3, 184 57 |
| | Depot building, Junction | | 2, 059 14 |
| May. | Interest on first mortgage remitted to trustee, 1st M. | | 38, 513 26 |
| | Paid sundry bills for W. Keokuk | | 573 74 |

| | | | |
|---|---|---|---|
| June 9. | Balances due the road transferred to receiver—Exhibit 21..... | | 1,172 79 |
| | Expenses, trustees, under deed of trust in foreclosure—Exhibit 22 | | 13,386 14 |
| | Balance on hand, applicable to foreclosure, expenses, and int. | | 21,052 87 |
| | | | 382,261 88 |
| | Balance in hands of trustees..... | | 21,052 87 |

EXHIBIT No. 28.

*Recapitulation. S. Chamberlain coupon ac't.*

| | | | | |
|---|---|---|---|---|
| | Amount unpaid on bonds— | | | |
| | First mortgage, La C. & M. R. R..... | | 2,120 00 | |
| | Second " do ..... | | 600 00 | |
| | Milwaukee City, La C. & M. R. R..... | | 945 00 | |
| | ditto Milw., Fond du L. & G. Bay ..... | | 525 00 | |
| | | | | 4,190 00 |
| 1858. | | | | |
| | Paid as follows— | | | |
| Jan'y | 4 real estate coupons ..... | 60 | 240 00 | |
| 1857. | | | | |
| Sept. 1. | 1 Mil. City, Green Bay, & F. du Lac, | 35 | 35 00 | |
| | 2 " " " " | 17 50 | 35 00 | |
| | 3 Mil. City, issued to La C. & M... | 35 00 | 105 00 | |
| Nov. | 1 first mortgage ..... | | 20 00 | |
| | | | | 435 00 |
| | | | | 3,755 00 |

482 *Milwaukee city issued to Milwaukee, Fond du Lac & Green Bay R. R. Co.*

| | | | |
|---|---|---|---|
| | 87 bonds, 1,000 each..... | 87,000 00 | |
| | 54 do. 500..... | 27,000 00 | |
| | | | 114,000 00 |
| | Interest payable semi-annually..... | | 3,990 00 |
| 1858. | | | |
| Mar. 1. | 86 coupons on hand, 35..... | 3,010 00 | |
| | 53 " " 17 50..... | 927 50 | |
| | Deficit..... | 52 50 | 52 50 |
| | | 3,990 00 | |

| | | | |
|---|---|---|---|
| Sept. 1. | 83 coupons, 35 00 | 2, 905 00 | |
| | 51 " 17 50 | 892 50 | |
| | Deficit | 192 50 | 192 50 |
| | | 3, 990 00 | |
| 1859. | | | |
| Mar. | 84 coupons on hand, 35 00 | 2, 940 00 | |
| | 44 do. 17 50 | 770 00 | |
| | Deficit | 280 00 | 280 00 |
| | | 3, 990 00 | |
| | | | 525 00 |
| | 8 coupons, 35 | 280 00 | |
| | 14 do | 245 00 | |
| | | 525 00 | |

*Milwaukee city bonds, issued to La Crosse & Milwaukee R. R. Co.*

| | | |
|---|---|---|
| 140 bonds, 1,000 | | 140, 000 00 |
| 120 do. 500 | | 60, 000 00 |
| | | 200, 000 00 |
| Interest payable semi-annually | | 7, 000 00 |

| | | | |
|---|---|---|---|
| 1858. | | | |
| May 1. | 137 coupons on hand, 35 00 | 4, 795 00 | |
| | 114 do. 17 50 | 1, 995 00 | |
| | Deficit | 210 00 | 210 00 |
| | | 7, 000 00 | |
| 1858. | | | |
| Sept. 1. | 139 coupons on hand, 35 00 | 4, 865 00 | |
| | 115 " " 17 50 | 2, 012 50 | |
| | Deficit | 122 50 | 122 50 |
| | | 7, 000 00 | |
| 483 1859. | | | |
| May 1. | 130 coupons, 35 00 | 4, 550 00 | |
| | 105 do. 17 50 | 1, 837 50 | |
| | Deficit | 612 50 | 612 50 |
| | | 7, 000 00 | |
| | Deficit on Milw. city bonds | | 945 00 |
| | 14 coupons, 35 | 490 00 | |
| | 26 do. 17 50 | 455 00 | |
| | | $945 00 | |

*La Crosse & Milwaukee second mortgage bonds.*

| | | | |
|---|---|---|---|
| | One million of dollars, 8 p. c. interest, payable semi-annually | | 40,000 00 |
| 1858. | | | |
| Mar. 1. | 996 coupons on hand, 40 | 39,840 00 | |
| | Deficit | 160 00 | 160 00 |
| | | 40,000 00 | |
| Sept. 1. | 992 coupons on hand | 39,680 00 | |
| | Deficit | 320 00 | 320 00 |
| | | 40,000 00 | |
| 1859. | | | |
| Mar. 1. | 997 coupons on hand | 39,880 00 | |
| | Deficit | 120 00 | 120 00 |
| | | 40,000 00 | $600 00 |
| | 15 coupons short, 40 | 600 00 | |

*La Crosse & Milwaukee first mortgage bonds.*

| | | | |
|---|---|---|---|
| | Total issue | | 950,000 00 |
| | Interest payable semi-annually | | 38,000 00 |
| 1858. | | | |
| May 1. | 500 coupons on hand, 40 | 20,000 00 | |
| | 892 " " 20 | 17,840 00 | |
| | Deficit | 160 00 | 160 00 |
| | | 38,000 00 | |
| 484 Nov. 1. | 470 coupons on hand, 40 | 18,800 00 | |
| | 907 " " 20 | 18,140 00 | |
| | Deficit | 1,060 00 | 1,060 00 |
| | | 38,000 00 | |
| 1859. | | | |
| May 1. | 481 coupons, 40 | 19,240 00 | |
| | 893 do. 20 | 17,860 00 | |
| | Deficit | 900 00 | 900 00 |
| | | 38,000 00 | 2,120 00 |
| | 49 coupons, 40 | 1,960 00 | |
| | 8 do 20 | 160 00 | |
| | | 2,120 00 | |

485 EXHIBIT No. 29.

District court of the United States for the district of Wisconsin—In equity.

NEWCOMB CLEVELAND
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN, and others.

Depositions taken on behalf of the defendant, Selah Chamberlain, before Winfield Smith, one of the masters and commissioners of this court:

THURSDAY, 30*th September*, 1858.

Charles S. Gregg, being duly sworn, says:

I reside at La Crosse. In December, 1857, I resided in Greenfield, Monroe county, at the tunnel on the La Crosse road. I was there when Mr. Cleveland came up there with Marshall and Mr. Edgerton to examine the work. I was then in the employ of Mr. Chamberlain. They did not stop there to make much examination of the work. I do not think they —— west of the ridge at all. The way I know it is, that snow had fallen that night and I followed their tracks up on to the ridge, but there no tracks going west of it. They arrived there quite late in the night. We had breakfast about half-past seven. They went out about eight o'clock, and soon came back. They returned this way about ten. They returned there again about the fifteenth of the month, getting there in the night. The next day was very cold, and I do not think they did any work at all. Mr. Marshall told me, in the presence of another man, that if he made an estimate that would be within ten thousand yards of the truth, he would think he was doing well.

*Cross-examined by Mr. Lynde.*

I was then taking care of the property at the ridge for Mr. Chamberlain. There were no men working there in the winter time. I was not there while any men were working there. Mr. Frazier was in charge of a gang of men there before that time. I don't know how many men were at work there at a time. I could not state how much a man could take out a day. I do not know how much sand work there was. I should think a man could take out twenty-five yards of sand a day there. The surface was sand. There was considerable rock; the most of it was rock. I should think you could not pick it, you would have to blast. Mr. Edgerton was not there with Cleveland the second time. Mr. Marshall was there. Another young man was there, whose name I don't recollect. I did not
486 know Mr. Edgerton before I saw him the first time. He is rather a tall man, not thick set. The first time he was there, I followed them over the ridge and walked back with them. Mr. Marshall made the remark about the estimate the second time he was there. He said he took the marks on the original stakes opposite the

original stations to calculate from. Mr. Cleveland was there with Mr. Marshall the second time, and a young man, a chain-bearer. There were three each time. I think Mr. Peverly was not there either time. The second time they came after dark, and left next day about ten in the morning. They stopped at Mr. Lockwood's, where I boarded. Mr. Cleveland was about there all the time. Mr. Marshall spoke to me about Mr. Peverly, his partner in the city, and gave me his card. I am confident I should have known if Mr. Peverly had been there, or if Mr. Edgerton had come there the second time Mr. Cleveland came. I don't know of Mr. Sill's making any survey that fall or winter. I don't know that he made any at any time. I should have seen him, I think, if he had made any survey that fall or winter. I went away in the middle of January. I am now in Mr. Chamberlain's employ, as foreman in charge of a general train.

C. S. GREGG.

Thomas Daniel, being duly sworn, says:

I am a civil engineer. My residence is near Columbus, Ohio. I have been an engineer since about 1840. I have been engaged in railroad engineering since that time. I was over the line of the La Crosse railroad beyond Portage. I was engaged as an engineer on that road from March, 1857, to March, 1858. I am now employed on the St. Croix and Superior road. I know of no way in which the amount of a work done on a railroad, whether complete or incomplete, can be ascertained with accuracy without access to the original surveys, or to the field notes of the work as it progressed. To make a remeasurement of the work, you would have first to cross section the entire work as often as might be necessary from the character of the work. Where there was rock work, you would have to cross section the rock and the earth separately. This is in the absence of the field notes. You would, of course, have to guess in some measure at the original surface of the ground, because the embankment would cover it up, and it would be cut away by the excavations. You could not very well classify the work. You could not at best make, without the original surveys, an estimate which would be entirely accurate, even with all facilities. I know the general character of the work from Portage to the tunnel.

Question. Suppose the work done complete from Portage to Kilbourn City, and all or nearly done, ready for the track, from there to New Lisbon, and four or five miles done east of the tunnel, embracing a distance of sixty-five miles, how accurately could two engineers, without the aid of any field notes, survey that and estimate the quantity of work done in the space of four days?

487 (Objected to by Mr. Lynde.)

Answer. That would depend on how near they could guess at it. They could do nothing more than guess at it in that time. An engineer cannot measure side-hill cuts without the original surveys with any degree of accuracy at all. The same is true on level ground which is wet and marshy, so that the embankment would sink. I have seen this contract of Mr. Chamberlain's, under which he did the work west of Portage—the one made in January, 1857.

Question. How does it compare generally, as to prices, with other contracts that you know of being let in 1856 and 1857?

(Objected to by Mr. Lynde.)

Answer. It does not vary much from several that I know in Ohio. The contract of the Cleveland, Columbus, and Cincinnati road, on which I was engaged, the grading to complete the road ready for the track amounted to about thirteen thousand dollars per mile. There is some little rock on that road, but not on the southern part, of which I had the charge. The work is of a lighter character than on the La Crosse road. Labor and materials were then lower there than in Wisconsin in 1857. Part of the time labor there was as low as sixty cents per day. That price ($13,000) does not include chairs and spike. The Columbus and Xenia cost about the same. It was built about the same time. I have been in Wisconsin since about a year last March. I know Mr. Chamberlain by reputation. I think seven or eight years he has been an extensive contractor on railroad and other public works.

Question. What has been his reputation as a contractor as regards ability, means, and promptitude?

(Objected to as irrelevant and immaterial.)

It has been good, as far as I have known.

*Cross-examined by Mr. Lynde.*

I was division engineer on the La Crosse road. Mine was the northwest division, from Portage City to St. Croix river or lake. I was not engaged on the line which was located. The lines which I ran were north of the La Crosse road as now constructed. I left the La Crosse road at Portage, and made no surveys on the present completed line of the road. I have been over portions of the present line various times, and have been near it often. I walked from the tunnel to near Manston last fall, about the last of November or first of Decem er. It was for the purpose of coming to Milwaukee. The track was not laid at that time. There was some material then on the bed of the road that would answer well for ballasting. It is difficult for me to tell the character of the work at the tunnel. There is a great difference in that rock before it is exposed to the air and afterwards.

488 There are many kinds of rock which do not change on exposure to the atmosphere. That rock is sand rock, which is hard in its natural position, but falls to pieces on blasting. My object in going over the road was not to see it, any more than curiosity prompted me, but to get the best walking. I could not say what proportion of the work at the tunnel and approaches was rock. I could not say whether there was then any difficulty in ascertaining the character of the work; there would be at this time great difficulty. In classifying work after it is done you are very apt to be unjust to the contractor. You cannot classify it before it is done; the time to do it is as the work progresses. The original field notes would not aid you to classify the work; the field notes taken during its progress would aid you. The Ohio contracts I mention were let about 1849. I have no copies of them here. I have a copy of one of them at home. The

contract on the Cleveland, Columbus, and Cincinnati road, between Cleveland and Columbus, was let to Messrs. Hervey, Stone & Witt. The contract was for so much a mile, and the cost did not depend on the amount of work done. I cannot state the average amount of work per mile. I am thirty-three years of age. I have been railroading ever since I was fifteen years old. The reasonableness of the price of the tunnel approaches at two dollars per yard would depend on the amount of rock. I have known rock let as high as seven dollars per yard. I have never known such rock as this let at seven. I never saw any just like this before. I never knew of earth being let at two dollars per yard, except when covered with water. I suppose it would cost from six to ten cents per yard to take out the sand from the tunnel approaches, depending upon the length of the haul. I do not know that I ever knew of work like the tunnel work being let at five dollars per yard. I have known tunnel work let at a higher price than that for granite rock. There is more risk about the work than about hard rock. If I had had Mr. Chamberlain's first contract I should not have wanted to change it for a price very much less than that. Not that I think the contract was very good, but that I have a dislike to tunnel work. Under his first contract the work was to be divided into three sections, I believe, of about thirty-six miles each. I don't know anything about it, but I should think, as a mere guess, that cutting through the ridge would have brought the work in that section up to twenty thousand yards per mile.

Question. Was not the price that Mr. Chamberlain got for the tunnel and approaches clear profit, if the whole work in that section, including the thorough cut, did not exceed 20,000 yards per mile?

Answer. I could not answer, for this reason: there is a clause in that contract which lessens the price for material when the
489 quantity falls short, and I do not know enough about the quantities of the work on that section to make an estimate. I was not acquainted with Mr. Peverly in Ohio. I think Mr. Stoughton was the division engineer in charge of the division between Portage City and the tunnel. I am not now in Mr. Chamberlain's employ.

Question. Is it not just as easy to get at the amount of excavation on a side-hill cut, where the surface is even, as it is on the level ground? Can it not be ascertained with the same accuracy? I mean after the work is done.

Answer. It might be, if you could be sure that the surface had been even. You could only know that from the field notes; you can get the contents of any figure when you have the length, breadth, and thickness.

THOS. DANIEL.

Don. J. Whittemore, being duly sworn, says:

I am a civil engineer. I have been upon railroads since 1845. Prior to that I was doing nothing but surveying since I was able to do anything. I am at present engaged on the Southern Minnesota railroad as chief engineer. It is impossible to make a correct estimate of the amount of work done by observations made afterwards, unless you have the original field notes. It is impossible to classify work unless you have the notes made during the progress of the work. Accurate measurements

are (or should be) taken before work is commenced—showing the contour of the ground before it was disturbed. A person measuring after work is done, without the original data, must assume that the surface was plain, or guess at what it might have been from one side of the cut to the other, which assumption or conjecture would be likely to lead him into great errors, particularly in heavy work. My knowledge of the material through which a great portion of the La Crosse road runs is such that I should be loath to attempt to classify the work done, after it had been exposed for any length of time. The hard materials become covered over with the soft materials which are washed down over them, and the only way to ascertain the nature of the material is to dig into the slopes. I have been employed on the La Crosse road since 1853, until the summer of 1857, between here and Beaver Dam. The first time I was over the road west of Portage City was in March last. I took the cars at New Lisbon. Two engineers, with an assistant, might take as much time as they pleased, and they could not by measurement ascertain the amount of work done on the La Crosse road between Portage and the tunnel without any prior surveys. They might make an approximate estimate; they might, without the previous data, survey and measure the work so as to make an approximate estimate at the rate of three to four miles a day; but even then they would be liable to gross errors. I read this morning the copy of Mr. Chamberlain's ——— for the construction of the western division of the La Crosse road, made on the 20th
490 of January, 1857, which is in the printed volume of the investigating committee's report. I read that addition which relates to the tunnel. I have been in Wisconsin and Minnesota about five years.

Question. How does that contract compare as to prices with other contracts which you know have been made in Wisconsin, Iowa, or Minnesota, in 1856, and 1857, and 1858?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. I am acquainted with two contracts made by the La Crosse company with Jackson & McLaughlin and with Newcomb Cleveland. In the former, the limits of quantities and the prices were less than in Mr. Chamberlain's. But the profits, the *pro rata* profits, were greater in Jackson & McLaughlin's contracts than in Mr. Chamberlain's. The percentage of profit would be greater, I should think. That was the division between Madison and Portage. The contract was let about the same time that Mr. Chamberlain's contract was let. I saw the tunnel immediately after they had got the approach done on the west side, and had commenced the tunnelling. Mr. Chamberlain was to receive, I believe, five dollars a yard for excavation in the tunnel, and two dollars a yard in the approaches, and twenty-five cents a foot for timber.

Question. Taking into account the state of the country, the appearance of the work as it then was, and all other circumstances as they then existed, how, in your opinion, did the prices of the tunnel work in Mr. Chamberlain's contract compare with those in other contracts for the same kind of work let by other companies, if you know of any others?

(Objected to by Mr. Lynde as irrelevant and inadmissible.)

Answer. I can hardly think of a case similar to that; contrasting other works that I know of with that, I should feel loath to make any change in the prices or amounts. Tunnels are frequently made through sharp points or into bluffs, where you can see beforehand the material in which you are going to work; most of the Ohio tunnels are of this kind; but in this case the approaches are long, and you cannot know beforehand the character of the work to be done. There is nothing on the surface to indicate the nature of the material that you are to work. If the material had been such that the arching had to be carried along as fast as the excavation, the price named in the contract would not have paid the contractor; my reason for this opinion is that I know an instance of that kind. A tunnel on the Central Ohio road was let at three dollars and a half a yard; after entering it, the roof, on exposure to the atmosphere, began to crumble, and it was necessary to arch it. The contractor failed; they increased his price to four dollars a yard; he worked on and got a hole through the tunnel and the bottom out, and then failed again. The company then took hold, and only suspended work when they failed.

491 Owing to the difficulty of getting hands to work in the worst portion of the tunnel, they were unable to complete it, and the tunnel fell in, until the top of the ridge (150 feet above) fell in. I mention this to show the risk; some tunnels are much more favorable. There is always in tunnel work a great uncertainty as to what the work will be, and the contractor has to run a risk, unless he provides against it in his contract.

*Cross-examined by Mr. Lynde.*

I am not aware that any of the directors of the company were interested in the Jackson & McLaughlin contract. I do not know that Jackson & McLaughlin gave anything for that contract. I mean by what I said about the comparative profits of Jackson & McLaughlin's and Chamberlain's contracts, that considering the actual amount of work to be done at the prices named in each contract, there would be a greater profit in proportion to the money expended in Jackson & McLaughlin's contract than in Mr. Chamberlain's. Their contract was from Madison to Portage. I don't know how they were to be paid, but I think in cash, or partly in cash. The limit of quantities in the Madison and Portage road was twelve thousand yards per mile through the whole line. That contract included also the road from Columbus to Midland. I never made a survey on that portion of the road embraced in Mr. Chamberlain's contract; I have been over it several times. I think there is scarcely any hard pan between Beaver Dam and Rock River. I know nothing of the character of the hard pan west of Portage. I do not know that there is any hard pan west of Portage. In this State hard pan is more like gravel and clay cemented—bluish clay with small limestone and small round stone in it, very compact and very dry; there are various grades of hardness; sometimes you can hardly drill it; you can trace it until you can hardly distinguish it from clay. On the La Crosse road we have met it with loose running sand directly over it; it was in a bed parallel to the surface of the ground where there was no external indication of it; sometimes the upper surface of it was parallel to the surface of the

ground, sometimes not; sometimes it appears on one side of the track and loses itself before it reaches the other side of the track.

If you should go into an excavation, by shovelling into the slope beyond the reach of the weather, you could tell where the hard pan had been cut into, but frequently the soft material above the hard pan will slip down on to it, and coat it entirely. I have seen the material that came out of the tunnel. It comes out in the form of sand; sometimes in blocks; but then the consistency has been destroyed by the powder. The rock is soft sand rock as it comes out. The approaches to this tunnel seemed to me to be of the same material as the tunnel, soft sand rock; it was frozen at the time, and it was difficult for me to judge how much was rock, and how much was earth. I should want, for taking out the approaches to the tunnel, a dollar and a half for the rock, and thirty cents for the common earth;
492 I should want this price for the earth, because I think it was a mere surface covering of the rock, and filled with oak grubs. Some of the earth could have been removed for fifteen cents, and perhaps all. I don't think the rock excavation could have been done for thirty cents; I don't know what it has actually cost. I don't think the arching could have been done for twelve dollars a perch. I would calculate to do that with brick; my reason for that is, that I once got up a bid for a similar work. The shafts to be dug were holes from the top into the tunnel, to assist in the work. I should think the price ($10 per yard) would be enough. The cost increases rapidly with the depth. I cannot say how much work there was per mile on this section in which the tunnel is. I should have charged more for the tunnel work than five dollars per yard; I should not wish to take the tunnelling alone much less than six dollars a yard. But I am not a contractor; contractors are more risky than I am. As much of the material as I saw, came out of the tunnel in the form of sand; some I understood came out in blocks. When I spoke of six dollars a yard, I mean that I would not, before any work was done there, have taken a contract for less than that price. I would not have known what the material would be, but I should have found that it would be soft sand rock—so soft that the arching must follow the heading and the breasting. I should think, in that case, that there would be doubt about the work being profitable, even at the prices named in the contract I should want to have prices that would pay me. The difficulty in such a case is to get men to work there. There was quite a large amount of heavy work near Kilbourn City, or about there. There are some heavy cuts between Portage and Kilbourn City. I think there is some steep side-hill work near the Wisconsin river. Then there is the tunnel, which of course is heavy work.

In making my statement in regard to the impossibility of ascertaining the amount of work done from surveys made after the work is completed, I assumed that there was no cross section stakes, or other data to guide the engineers. The stakes, if standing, might mislead them unless they knew the distance each was from the other. These stakes are at equal distances from each other except when the nature of the work requires them to be nearer together, and then they are so put. If an engineer does not know the distances and

position of the stakes he would be confused by them. If an engineer knew the position of the cross section stakes they would measure a mile a day more in making an approximate estimate than what I have stated. I think there was no arching done in the tunnel. I have not been in it since it was completed. I could not, from that contract, now make an estimate of what price per lineal yard Mr. Chamberlain would have received for the tunnel work if it had been necessary to make the arch. I could not tell the amount of timber necessary. I could not tell the number of yards of packing over and on the sides of the arch. If it was to be arched with stone I should not know where I could get the stone, and how far I should
493 have to haul it. Those are all the items which I could not ascertain. I will make an estimate such as you desire.

*Re-examined by Mr. Emmons.*

If Mr. Chamberlain had come on to water or quicksand in the tunnel it would of course have added to the expense. I have never known quicksand found in a tunnel. I have known of water troubling contractors very much. In deep cuts quicksand is very common. I know a cut where the extreme depth was one hundred feet where they had intended to make a tunnel, but the water troubled them so much, and the nature of the material was such, that they concluded to make a thorough cut, and did so. For any surface indications that appeared, Mr. Chamberlain might have encountered a great many obstacles that would largely increase the expense to him of the work. There was nothing that I know of to indicate whether or not he would meet such obstacles. It was matter of uncertainty. It would depend upon how serious the obstacles were, whether five dollars a yard would pay for the work. If there were no obstacles, and the men were willing to work, that price would pay well.

D. J. WHITTEMORE.

FRIDAY, 1 *October*, 1858.

On this day appeared Mr. Lynde, of counsel for the complainant, and Mr. Emmons, of counsel for the defendant, Selah Chamberlain.

*Don. J. Whittemore recalled.—Cross-examined by Mr. Lynde.*

I have made the estimate as desired by you as to the cost of the arched tunnel. I call a perch twenty-five cubic feet.

The estimate is as follows:

| | |
|---|---|
| An arched tunnel twenty-two feet high and twenty-four feet in width in the clear, with a thickness of wall and arch of twenty inches, requires 21 cubic yards excavation per lineal foot, which, at $5 00, is... | $105 00 |
| 4¼ perches brick masonry, per lineal foot $12..... | 51 00 |
| Cost of lineal foot..... | 156 00 |
| 1,330 lineal feet cost..... | 207,480 00 |

This is for a double track.

| | |
|---|---|
| An arched tunnel sixteen feet in width and twenty-two feet high in the clear, with a thickness of wall and arch of sixteen inches, requires 3 perches brick masonry, per lineal foot, at $12 00 | 36 00 |
| 14½ cubic yards excavation, per lineal foot, at $5 00 | 72 50 |
| Cost of one lineal foot | 108 50 |
| 1,330 lineal feet cost | 144,305 00 |

This is for a single track.

494 *Re-examined by Mr. Emmons.*

I have made an estimate of the number of yards in the cut, if it was a thorough cut, assuming the height of the cutting at each end of the tunnel to be sixty feet, and the highest point intervening to be one hundred and sixty feet. There would then require to be moved at least seven hundred thousand yards of material. This is for the length of the present tunnel, 1,330 feet. I do not know that these data are correct. From observations I suppose they are approximately correct. A person, in judging of so large an amount of work, might easily be mistaken. I speak of the dimensions of the cut, of which I have no knowledge except from the information derived from the engineers.

*Cross-examined by Mr. Lynde.*

If the height of the ridge to be cut through was one foot less than I have assumed it, the amount of cutting would be considerably less. One foot less depth of cutting would make a difference of about twelve thousand yards of cutting. Ten feet less depth would make a difference of about one hundred fifteen thousand yards of cutting. This is estimating the slope at one to one.

D. J. WHITTEMORE.

Isaac C. Brewer, being duly sworn, says:

I am a civil engineer. I have been engaged as such since 1846. I have been so engaged in Delaware, Pennsylvania, Mississippi, Ohio, and Wisconsin, in railroad engineering. I am now engaged in Minnesota in railroad engineering. I am division engineer. It is not possible to measure accurately work after it is completed without access to the field notes taken before the completion of the work. The degree of accuracy with which it could be done would depend a great deal upon the time spent. A great many things would have to be guessed at at any rate. It would be impossible, either in cuts or fills, to find where the original surface was, after the work was done, without the original field notes. I was employed on the La Crosse road, on the northwestern division, not on the line located, but on a line run north of that. I saw the approaches to the tunnel after the ground was broken, but before it was finished. There was a depression on the east side of the hill before reaching it. That ridge might have turned out to be quicksand, or there might have been water there from springs of

in the hill. Indications of this kind would be taken into account by a contractor bidding for the work, and would of course enhance the price. I was through that part of the country in November, 1857. It was thinly settled, the roads were very bad, and it was a hard country to get through. I was up there in April, 1857, and I know its general features.

495 *Cross-examined by Mr. Lynde.*

The east approach crossed a depression before reaching the main hill. I think the greater part of that depression is filled, on the south side of the tunnel at least. That depression may have made the excavation a little less at that point. That depression would hardly show now. There was a small ravine or gully, which was crossed by the tunnel approach. There is a difficulty of ascertaining the amount of cutting and filling, besides the difficulty of ascertaing the original surface. There may be sinking spots. The amount of work in a cut can be measured if you know the original surface. In filling you can ascertain the amount of work done, if you have the original surface, and there is no sinking, or if you can measure the pit where the material comes from for the embankment. Then you would have to know the natural surface of the earth where the pit was. If there is a sinking spot, you cannot guess how much earth goes in there, unless you have some such data.

*Re-examined by Mr. Emmons.*

I have known Mr. Chamberlain by reputation for four or five years. I think he has been very extensively engaged in the construction of public works in Ohio, Vermont, and Pennsylvania.

Question. What has been Mr. Chamberlain's reputation as a contractor for ability, means, and promptness?

(Objected to as irrelevant.)

Answer. It has been good.

ISAAC C. BREWER.

John McLean Staughton, being duly sworn, says:

I am a civil engineer. I have been such since 1849. I have been so employed since February, 1857, on the western division of the La Crosse road, between Kilbourn City and La Crosse, in the capacity of division engineer. I know of Mr. Chamberlain's having a contract for the ballasting of the eastern division of the road. The portion of the road which crosses Fox Lake, between Beaver Dam and Portage, was included in that contract. There was a very considerable sink there. The work was piled there. It was so wet and soft there that it could not be filled at first without taking an immense quantity of earth. It was so bad that even the piling would stand, and it became necessary to fill it afterwards.

I have with me a copy of the final estimate under the gravel contract up to the first of October last for the ballasting between Beaver Dam and Portage.

Question. What do you know about its correctness? Tell
496 all you know about, and the source of your information.

(Objected to as incomplete.)

Answer. The gravel pits, from which the materials were taken, were measured by different assistants on the road, and cross sectioned. Those cross sections were returned to the office and the quantities then calculated. One of the gravel pits I measured myself. I have been over the calculations made of the others by the assistant engineers, and have found them to be correct. I have not been over every item in every calculation. I have been over many of them to test them and satisfy myself that they are correct. I have been over enough of them to test them and satisfy that they are correct. The last item is derived from the number of yards. I could not separate this from the first item. I do not know where they hauled gravel, to what particular mile or portion of the work.

The chief engineer cannot, of course, go and measure every part of the work. The assistant engineers, in the first place, go out to the place where gravel is to be taken, and accurately measure and cross section the natural surface of the ground. Then they go again at intervals, from month to month, and measure and cross section the pits whence the gravel has been taken. From these measurements calculation are made of the amount of work done and gravel removed. That is the manner in which these estimates are made up.

This paper (marked A) is the copy which I have mentioned.

(Paper produced, marked A, and offered in evidence in connection with the testimony of the witness.)

(Objected to by Mr. Lynde as incompetent and secondary evidence, being an estimate in gross, without the data upon which it is made.)

(Paper is hereto annexed.)

I had charge, as division engineer, of the work on the La Crosse railroad, from Kilbourn City to La Crosse, performed by Mr. Chamberlain under his contract with the company.

(Original papers are produced by Mr. Emmons, execution thereof proved, copies thereof are taken, marked respectively B and C, and are attached hereto. They are offered in evidence by the counsel for the defendant Chamberlain, and are objected to by Mr. Lynde, because they are irrelevant and immaterial. The contract paper, marked B, is offered merely as introductory to the paper marked C. The above objection is made to each paper separately. Paper marked C is offered in aid to the testimony of this witness and of witnesses hereafter to be examined.

Counsel for the defendant, Selah Chamberlain, also produces the certified copy of the final estimate of C. W. Woodward, chief engineer, which is hereto annexed and marked D. The same is objected to by Mr. Lynde as being secondary evidence, in that it is made up of prior estimates, which are not produced, and not from actual survey at the time, and that the original estimate would not be
497 evidence unless sworn to. This certified copy (marked D) is admitted by Mr. Lynde to be a true copy of the original estimate on file in the office of the secretary of the La Crosse and Milwaukee Railroad Company, which is now exhibited here.)

Witness resumes:

I know (as far as any division engineer ever informs himself upon such matters) that the amounts of work mentioned in this paper, marked D, were actually performed. No division engineer, of course, ever makes all the measurements in person, but relies upon the measurements taken by assistant engineers. The returns were made to me by the assistant engineers, and I am satisfied that they are correct. Upon a portion of the work, between Kilbourn City and Portage, I did not see the returns previous to making this estimate, but I examined them afterwards. I also accompanied Mr. Woodward and Mr. Sill in their remeasurements, and assisted them.

Those remeasurements are contained in the paper marked C. In those remeasurements we had the benefit of all the original field notes and the returns of the division and assistant engineers. I was then in the employ of the La Crosse and Milwaukee Railroad Company. There was other assistance besides Mr. Sill, Mr. Woodward, and myself. There was Mr. Howell. We were all in the employ of the company. I don't remember how long Mr. Woodward and Mr. Sill were occupied in that remeasurement; I think several weeks were spent about it in all. I think we made the remeasurements carefully and accurately; so accurately that if there had been any error in former measurements we should have detected it.

I think we arrived at the correct results very closely. I remember that there was a difference between our remeasurement of the work at one of the tunnel approaches, and the final estimate of the first of October. I think that difference must have arisen in this way: the sand on the sides of the approach had washed down into the cut to some extent, and so, when Mr. Sill and Mr. Woodward, the cut did not show the full amount of work which had been done. The difference was not material; I don't remember what it was. There was also another difference, which arose in this way: the assistant engineers had not got through with their work, and had not made full returns of the work at the tunnel approaches when the final estimate was made. We were not aware that there was any necessity for the returns being made by the day, and so they were a little behind, as they frequently were. Mr. Woodward therefore acted on a prior return, instead of one made up to the very day of the final estimate. I commenced work in March, 1857. I made the surveys myself from Kilbourn City to La Crosse. The rock excavation was estimated at a dollar a yard in the final estimate of 1st October, 1857. In the re-estimate it was estimated at seventy-five cents a yard.

498 Question. What occasioned that difference in the two estimates?

Answer. It was owing to the fact that the number of yards of earth work per mile fell short of twenty thousand, in which case, by the contract, twenty-five cents was to be deducted from the price per yard. The first estimates were based on the supposition founded on the profile, that the earth work would exceed 20,000 yards per mile. The haul was made longer than had been originally intended. This diminished the amount of earth work, since the earth from the cuttings was carried to the embankments instead of being wasted. I

am in charge of the work, including the tunnel. I had charge of the original surveys myself. I received instructions from the president and chief engineer in March, 1857, to run my lines across the ridge with reference to making a thorough cut. I run the lines in April, about the middle of April, I think. I had just completed my trial lines over the ridge, and the president, Mr. Kilbourn, and Mr. Woodward, chief engineer, came to the ridge for the purpose of examining the lines which I had run, and of determining which should be adopted. I had understood that a thorough cut had been settled upon, and my efforts had been only to get the most feasible route for a thorough cut. The various lines and profiles were examined by those gentlemen, and estimates were made of the cost of a thorough cut on each of these lines. They were made on the basis of the prices mentioned in Mr. Chamberlain's contract, as it then existed, so at least I then supposed, as they assumed instantly the prices. I did not then know what the prices in Mr. Chamberlain's contract were, and I do not now remember what prices they fixed.

Question. Do you remember anything being said between them at that time, in estimating the cost of the thorough cut, about Mr. Chamberlain's original bill, on which his contract of January, 1857, was let for tunnel work and for thorough cut work?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. I remember that there was a conversation in regard to that. The particulars of the conversation I do not remember.

Question. What was concluded upon between them?

(Objected to on the same ground.)

Answer. They concluded that a thorough cut was out of the question, and that it was necessary to have a tunnel, although Mr. Kilbourn was strongly opposed to having any tunnel on the road.

499 To what did Mr. Kilbourn yield? What reason decided them?

(Objected to on the same ground.)

Answer. The comparative cost of the tunnel and thorough cut was the consideration that determined them. The lesser expense of the tunnel decided it.

Question. Do you know whether they then agreed upon a tunnel?

(Objected to on the same ground.)

Answer. They did; and I was instructed to locate immediately a line for a tunnel. The side stakes were set at once, so that work could be commenced.

Question. At what date was this?

Answer. I could not state exactly, but I should think about the 15th of April, 1857.

Question. What was the comparative expense of the thorough cut and of the tunnel according to their estimate?

(Objected to on the same ground.)

Answer. Taking the most feasible location for the thorough cut, at the prices named in the contract for the thorough cut work, the expense would have been about three times as great for the thorough cut as it had been for the tunnel at the prices fixed in the present contract for the tunnel work. This is my conclusion, and I have

carefully considered the matter. I do not remember the precise relative cost of the two modes as estimated by them at that time.

Question. Did Mr. Kilbourn object to the tunnel at that time?

(Objected to on the same ground.)

Answer. Mr. Kilbourn was strongly opposed to the plan of a tunnel, saying that he did not know anything about tunnel work; that he doubted whether it was feasible; whether too long a time would not be consumed in making it. Mr. Woodward mentioned to him that I had been engaged a good deal in tunnel work, and was well acquainted with it. He finally yielded upon consultation with the chief engineer and others, in view of the great saving in expense.

(Mr. Lynde objects to all evidence of the conversations of Mr. Kilbourn and Mr. Woodward and the witness, and all evidence on that subject is taken subject to the objection that it is irrelevant and immaterial.)

Mr. Kilbourn stated that he was going to St. Paul, and consequently could not make the arrangement himself with Mr.
500 Chamberlain in regard to the tunnel, but that he would write to Mr. Goodrich, vice-president of the company, about it. He wrote a letter at Sparta which was sent to Mr. Goodrich. I know the prices at which the tunnel work was let. I have been engaged upon one tunnel of about the same length as this; I had charge of it. I have visited a great many in the course of construction.

Question. In view of all surrounding circumstances then existing, was that a reasonable contract in point of price agreed to be paid for the work?

(Objected to by Mr. Lynde.)

Answer. My impression was that it was too high in some particulars and very moderate in others. The price for the approaches was, I thought, too high; the price for the tunnel work I should have wanted increased, to make myself safe in doing it; the arch work I thought too low, for I did not think the material for it could be got nearer than Kilbourn City, and the roads were very bad. When I was there the ridge was covered with snow, quite deep, except where very strong winds had blown it off, and the exposed surface of the ground indicated sandstone, with some iron; there were also pieces of flint about. There were springs of water, one on each side of the ridge, and the expectation was, that we should meet water. Water is now dripping at several places in the tunnel, causing some little trouble, but nothing at all serious. The approaches are in valleys coming up to the main ridge; of course we selected, in locating the line, the lowest ground; the ground slopes on either side from the ridge to the approaches. The idea of a tunnel had been talked of before. When I received my instructions in the first place I inquired about a tunnel, but was informed that Mr. Kilbourn had said positively that there should be no tunnel on the road. I run all my lines in reference to a thorough cut. There is almost always a great risk in making a tunnel, (unless it be a very short one,) as regards the material to be excavated from it. Sometimes, when the tunnel is short, and you can see the face of the rock on both sides, you can have a certainty of what the work will be, generally; however, there is a great uncertainty. I know of a tunnel on the Baltimore and Ohio

road, which was let with the expectation that the material was limestone; upon working into the hill, however, it was found that the limestone was immediately over the tunnel, forming a solid roof, and that under that was only a clay which was shovelled out without trouble.

Question. What rates have you known tunnel works to cost, or to let at; on what circumstances does the cost of construction depend?

(Objected to by Mr. Lynde because it is double—that the first part is immaterial and irrelevant.)

501 Answer. I know of no tunnels which have been let before the ground was opened, so as to show what the material would be, being let at less than six to eight dollars a yard. The price depends upon the knowledge which may be obtained by the nature of material in the neighborhood, and also on the price of labor, materials, and provisions.

*Cross-examined by Mr. Lynde.*

I am now in the employ of the La Crosse Railroad Company, not of Mr. Chamberlain. The company pays me through Mr. Doty, secretary and treasurer. I am engineer on the road. I am hardly chief engineer, but I am remaining to finish up what engineering there is to be done. I suppose I am still division engineer. I have at several different times had to do with matters on the eastern division. I have measured several gravel pits—one about 14 miles, one about 48 miles, and one about 81 miles from Milwaukee. I have also made a plan for a drawbridge, which was to have been built in 1857 over the Portage canal. It was never built. I don't remember just now of anything else in particular which I have done on the eastern division. Three or four weeks ago I set some grade stakes for raising the track at one place on the eastern division. Two of the gravel pits, 14 and 48 miles from here, I measured within the past month. I don't remember when I measured the other; it was some time last winter. That is between Cambria and Midland, about 14 miles, I should think, this side of Portage. I do not know for what purpose it was measured. I was requested by Mr. Woodward to measure it. I made a return of my measurement. I had the original cross sections, which were furnished to me by him from the office. I don't recollect how much land had been taken out of these. I have nothing now to show. I should think there were 70,000 or 80,000 yards. That was a borrowing pit. I have seen gravel taken from that pit and put on the road for ballasting. I have seen them at work three or four miles from that pit with gravel which came from that pit. I don't know how much of the gravel from that pit was used for ballasting. It is 27 miles from Fox Lake to Portage. It is less than a quarter of a mile from Fox Lake to the crossing of Fox Lake. I don't know whether the work done on that portion of the road that crossed Fox Lake was included in the ballasting contract. I don't think I have testified on my direct examination that it was. A majority of the work done there was done in the summer of 1857. I can't tell within a month when he (Chamberlain) began or when he stopped. I was then at

work between Kilbourn City and La Crosse. I passed over the road between Beaver Dam and Portage, I suppose, about once a month in the cars. I did not pass in any other way. In passing, I got out of the train a number of times to go and look at the work at Fox Lake, then under construction. The trains stopped there to wood and water, and to change passengers, and they went very slowly over the
502 work, giving me an opportunity to examine it. I should judge it was four or five hundred feet from where the cars stopped to take wood and water to the point of the crossing of Fox Lake. I can swear that it is not more than a quarter of a mile. The water station is east of the depot, and the wood is strung along some distance east of that. I don't remember any particular dates when I got out of the cars to look at the work, but I recollect doing so several times. I never stayed over a train there. I did not see anything being done there except the trackmen fixing the track, putting under it material which had been thrown off there. The track was laid there at that time. It was on material that had been hauled up there. The first time that I recollect paying attention to it, some of the track, I can't say how much, was laid on piling. I don't recollect of seeing them doing anything to that. The men were raising track on the embankment. It appeared sometimes to have settled, sometimes on to one side, throwing the track out of line. That occurred elsewhere on the road, about 12 miles this side of La Crosse. These are the only indications that I saw of there being a sink hole there. Four or five times, when I have been passing in the cars, I have seen them lining up the track. That is all that I have seen from which I know there was a sink hole there. I don't know how much gravel it took to line up the track. I do not know, of my own knowledge, that Mr. Chamberlain had any authority to fill up that crossing at Fox Lake. I do not know how much earth or gravel he used in filling there. I cannot now state, from information or otherwise, how much he used. I can't state, from my knowledge or from information, where he got the earth or gravel that he used in that filling. I only know from the returns of the assistant engineers how much ballasting was put on the road between Beaver Dam and Portage. These returns are in the office of the chief engineer, in this city of Milwaukee. I judge of the character of the ground at Fox Lake, and of the necessity of piling and filling, from what I have been told, and also from what I saw of the bank and piling settling. I saw nothing but what I have stated. I have it from Mr. Woodward that this paper, marked A, is the final estimate of the work, and I have the estimate of his estimate book, which he left in my possession. That book does not show the data on which this estimate was made up. That is the only knowledge I have of this being the final estimate. That estimate is made up from the cross sections and notes of the different engineers, and the cross sections of the borrowing pits. Those cross sections are in the office of the chief engineer, in my custody. I know that there are cross sections and returns, from which this estimate was made up. I only know as to the correctness of the estimate from the fact that I have measured and cross-sectioned one of the borrowing pits, and have examined the cross sections of the others, made by the assistant engi-

neers, and have tested various items of their calculations. I tested the calculations of some of the areas of the cross sections and of
503 some of the quantities. I did not go through the whole thing at all, but only here and there to satisfy myself. I have made those calculations within the last few days. I am certain I made calculations in regard to the ballasting. I did not add up the quantities contained in those various reports, and I do not know what the sum total is. I suppose this estimate was made up from the sum of those quantities. I did not find among them any return of the work at Fox Lake. I suppose that was kept separate. I think I measured the borrowing pit between Cambria and Midland eight or ten months ago. I don't know much of the gravel from that pit was used for ballasting. I have among my reports one that would agree with the measurement of the borrowing pit that I measured. It is the report that I made.

SATURDAY, 2*d October*, 1858.

I have brought this morning such of the returns as I could find. I suppose they are not all. I find only three of the final returns, and two by assistant engineers and one by myself. I have some monthly returns besides. I have no other return of the number of yards in the pit measured by me except that made by myself. I have the original cross sections. I have, in addition, the cross sections of another pit, but not the quantities, as the calculations are not made. I have nothing to compare my measurements with except the quantities mentioned to me by the chief engineer as having been ascertained before. He gave them to me verbally. He did not give me the exact quantities, but stated that I had made it a trifle less than it had been made before. These returns apply to a pit at Portage City, one near Midland, I believe, and one west of Fox Lake, besides the one which I measured. In regard to the one west of Fox Lake, the cross sections are returned, but not the quantities. I do not know, and have nothing to show how much of the gravel taken out of the Midland pit was used in ballasting. I suppose that the gravel from the Portage pit was used on the eastern division, excepting the deduction mentioned in the return for the quantity used west of Portage, from the fact that such deduction is mentioned. I have made some calculations on these other two returns. I have calculated some of the areas and found them correct. I have not made any calculation on the return of the pit west of Fox Lake. All the reports that I have with me show in all 138,667 yards of gravel taken out of the borrowing pits. I do not know that Mr. Chamberlain opened that borrowing pit half-way between Cambria and Midland, or, as it is called, the Steam-Shovel pit, (having been worked by a steam shovel.) I have been told that he did. I don't find any monthly return of cross sections of the gravel pits on the eastern division. There are so many papers and books there that I have not been able to examine them all. I have never seen those returns there. If Mr. Chamberlain drew his pay
504 each month for ballasting done, he probably did so on the basis of the monthly estimates, which are made up from the returns of the assistant engineers. I suppose the chief engineer very seldom

makes a supposed estimate. I don't know how much of the western division was completed by the first of October, 1857, and don't remember whether the cars then run beyond or to Kilbourn City. It is seventeen or eighteen miles from Portage to Kilbourn City. The road was graded to Orange, about four miles west of New Lisbon. I believe the grade was completed to that place on the first of October, 1857. I believe New Lisbon is about forty-three miles west of Portage. To the best of my recollection, the road was all graded to that point at that time. I think there was, at that date, a side track at Lewistown and Kilbourn City. I am not positive whether there was any side track at Portage included in the western division. I do not know exactly where the line is between the two divisions. I am certain there was then side track at Kilbourn City. I could not say how much was then completed on the whole division. I do not know that there was any track laid west of Kilbourn City. In January, 1858, there was completed on the western division two $\frac{32}{100}$ miles of side track, including twelve hundred feet of main line, which had not before been estimated. At Lewistown there were 1,053 feet; at Kilbourn City, 3,602; at Linden, 1,102; at Manston, 1,496; at New Lisbon, 3,808; and the twelve hundred feet of main line. The road was graded to Orange. That I state from recollection; I have no minutes to show that. The item of grading and masonry was made up by taking the grading and masonry west of New Lisbon only. It was put in at $10,000 per mile, because it was supposed that the remainder of the work to be done would amount to about $2,000 per mile to make up the $12,000 per mile for the 9½ miles. Immediately west of the tunnel there was some grading done, but not finished. There was a space immediately west of the tunnel where no grading was done; then there was about three-quarters of a mile partially done. Then a short distance west of that was another piece of two miles nearly finished. Commencing about half a mile west of Sparta, there was work done at various points, scattered over some sixteen miles; at some places very little, and at some places nearly finished—in all, about 36,500 yards. There were a great many places on the western division where there was extra haul. There is a memorandum of it made up by Mr. Woodward, in his handwriting, from measurements made by the assistant engineers. This paper merely shows the extra haul, not the whole length of haul. I suppose most of the returns of the assistant engineers, from which this statement was made up, are in the office of the chief engineer. On the first of October, 1857, twenty-three hundred and thirteen stations were completed as to grubbing and clearing, making something over forty-four miles of grubbing and clearing—actual stations of timber which had been grubbed and cleared. There were a good many stations on the work where no grubbing and
505 clearing was done. The actual work done included also a proportionate amount of stations where no grubbing and clearing was done. The amount of grubbing and clearing which I have stated to have been done I derive entirely from a memorandum in my possession, made in the handwriting of the chief engineer. I will furnish a copy of that memorandum, to be attached to my deposition.

Question. From your knowledge of the line of the road, can you

say that there were forty-four miles of actual grubbing and clearing in all to be done on the western division?

(Objected to by Mr. Emmons as irrelevant and immaterial.)

Answer. I think there was more than that—I can't tell how much more. There had been, on the first of October, 1857, some grubbing and clearing done west of the tunnel—I think about eight miles. I have no returns showing the amount of solid rock excavations up to that time. This item in the engineer's estimate is made up from the returns of the assistant engineers. I suppose those returns are kept in the office of the chief engineer. I have a memorandum, I think, showing the roadway and cattle passes made by the first of October, 1857; the items of it were given to me by Mr. Woodward some ten days or two weeks ago. I went along with Mr. Woodward and Mr. Sill in their remeasurement, and was present when the items were first entered by them. I remember some of the items. I know about this arched roadway; it is about two miles west of Kilbourn City. It is of stone. It had to be built of very heavy work, because the foundations were bad. I suppose the work would be worth $4 or $5 a perch. I don't know the amount of stone work in it; I suppose the returns in the chief engineer's office will show. I recollect one under pass that was completed by the first of October. It was the other side of Kilbourn City, about two miles. It was made of two bents of timber planked up. I don't remember the height of the bank. I should think, at a rough guess, that it would cost about two hundred dollars. I don't know how much timber and lumber were used in its construction. I suppose, according to the best of my recollection, that these are composed of mud sills, with three upright posts on each side, with caps on top of those posts, made of timber about a foot square. There are braces (diagonal) running from near the bottom of the posts to the mud sills. I suppose there are also cross pieces of ten inches to a foot square, and stringers. I should think that under pass is about fifteen feet high. I do not now recollect any other than the one I have mentioned. I will give a copy of the memorandum of roadway and cattle passes The item of "excavations for foundations and timber for same" applies to all excavations for culverts. In many of those timber foundations are put in for the masonry to rest on, to prevent the masonry from settling unevenly and cracking, especially where the ground
506 was soft. I knew where most of the excavations were done. They were at the culverts and bridges. There were some masonry culverts. There was one about a mile west of Kilbourn City. There were several put in west of Kilbourn City before the first of October, 1857. The item of bank walls includes several walls. There is one at Lone Rock, between Portage and Kilbourn City. I don't remember the dimensions. There was one about 2½ miles west of Kilbourn City. There was one about ½ a mile this side of Kilbourn City. That is all the bank wall that I remember. The quantities of those were returned to the office of the chief engineer, I suppose, and should now be in his office, of which I have charge. There was some pile bridging at these different places, I think, between Portage and Kilbourn City. I don't know how that item is made up.

I think that arched roadway is about 2½ miles west of Kilbourn City. It is where the road crosses on an arch over a ravine, in which runs a

highway. The tunnel culvert is near Kilbourn City, and is a culvert tunnelled through the rock to let out the water from a ravine which had been dammed up by the embankment of the road. I don't know how much ballasting had been done by the first of October, 1857. I could not tell whether there were five miles or ten miles. There was some. It ought to appear in the returns of the office of the chief engineer. I don't know whether Mr. Woodward is now chief engineer.

The paper marked E, which I now produce, is a copy of the memorandum made by Mr. Woodward as to the grubbing and clearing which I have mentioned.

(Paper marked E produced and attached hereto as a part of this deposition.)

This paper now produced by me, marked F, is a copy of the memorandum in Mr. Woodward's handwriting, mentioned by me as relating to the extra haul.

(Paper marked F produced and attached hereto as a part of this deposition.)

I have looked in the office for further returns, but I have found none relating to road-crossings and under-passes.

J. McL. STAUGHTON.

William R. Sill, being duly sworn, says:

I have been an engineer—a civil engineer. I followed that profession from 1844 to 1856. I have been in almost all capacities as engineer on railroads. I was chief engineer on the La Crosse road from 1853 to 1856, about two years and a half. I was succeeded directly by Mr. Kilbourn, and afterwards by Mr. Woodward. I was employed to make a re-estimate of work done by Mr. Chamberlain on the western division of the La Crosse road, under the contracts relating
507 to that work. I undertook the job under an appointment made by resolution of the board of directors of the La Crosse & Milwaukee Railroad Company. I acted under that. Mr. E. W. Woodward, chief engineer of the road, acted in concert with me. Acting under that resolution, Mr. Woodward and I went on to the work with such assistants as were necessary, with the original profile, cross sections and field notes of the work, and proceeded to make a re-estimate. We estimated up to the first of October, 1857. This being in March, I was of course obliged to rely upon what Mr. Woodward and Mr. Staughton told me as to the amount of work that had been then (1st October, 1857,) done. We had access to all papers that I considered necessary. Everything that I called for was furnished me. All field notes and surface notes were at my command. I carefully compared them with the work as completed. In all cases where I considered it necessary we took new measurements. We had access to all contracts, all profiles, all field notes, all cross sections—everything that an engineer could ask for in making a re-estimate. We made that re-estimate on the prices named in Mr. Chamberlain's contract, putting our own construction upon it. The result was, that we found there had been done upon the main line forty-three miles, at $12,000 per mile, less some items, which I shall mention. We found the work to have been done according to the items stated in the report signed by us, which I now have in my hand, and a copy of which, marked C, is

hereto annexed. We called it forty-three miles finished, although there was a little not quite completed. There was a little track to be laid on the west end of that, and also some little grading to be done to prepare the bed for the track. There were two $\frac{32}{100}$ miles of side track, at which we arrived by measuring the side track laid.

The third item shows the excess of grading, bridging, and masonry, over and above the forty-three miles that were considered complete. The item of extra haul, $27,537 30, was arrived at by careful computation from the notes and from the profile. The next item, of grubbing and clearing, we arrived at by comparing with what had been done with what yet remained to be done. The solid rock excavation was obtained from measurements made by ourselves. The loose rock excavation was obtained from the returns of the assistant engineers. It is impossible for any one to measure that work after it is completed. The next item, of roadways, bridges, cattle passes, and changing highways, we arrived at by an exmination and estimate of each separately. The excavations of foundations and timber in same we estimated from the statements of Mr. Woodward, Mr. Staughton, and Mr. Howell. No one can know anything about the amount of timber under a culvert after it is completed. The same in regard to a bridge abutment or any other structure. The next item, of bank wall, we took the quantities from the returns of the assistant engineers, and the price, $3 per yard, was agreed upon by Mr. Woodward and myself as a fair price for the work. The next item,
508 of tunnel approach excavation, was got at from careful measurements made by ourselves.

The next item, file bridging, was an estimate of the cost of doing the work.

The item of tunnel culvert at Kilbourn City we got in the same way; we estimated what it was worth to do it; we did not estimate quantities in that.

The next item, ballasting 45 $\frac{32}{100}$ miles, at $2,000 per mile, as per stipulation, we got at by a close examination of the road that had been ballasted; the price we found in some contract.

The item of grading depot grounds at Kilbourn City we got at from the returns of the assistant engineers and from an examination of the grounds.

The item of damage for detention and change of line at New Lisbon we allowed on the statements of Mr. Woodward and Mr. Staughton, that the change of line had occurred, and that Mr. Chamberlain had been obliged to pay $1,121 in consequence of the change of line and consequent detention. The above items make a total of $1,106,163 85. From that we made a deduction for work on the forty-three miles first mentioned that was yet incomplete, being some few banks that were yet narrow, and a small part of the track not yet laid, although everything was ready for it. This was east of Lisbon; we were careful to make a sufficient deduction to cover any expense of fully completing the 43 miles; this was the same for which a deduction had been made in the estimate of the chief engineer. In our estimate, we called the solid rock excavation seventy-five cents a yard; in the chief engineer's previous estimate, of October 1, 1857, the same

item was called one dollar per yard. This difference in price arose in this way: by the terms of Mr. Chamberlain's contract of January 20 he was to be entitled to only seventy-five cents per cubic yard if the whole amount of earth work excavation in the section should fall short of twenty thousand yards per mile; by computation we found that the whole earth work did fall short of twenty thousand yards per mile, and therefore we fixed the price at seventy-five cents. In making up the third item of grading, bridging, and masonry, over and above the forty-three miles, Mr. Woodward and myself had considerable discussion in regard to the basis to be fixed upon; we finally settled upon a basis which produces the result in our report, and which differs from the basis which they had before. Had we assumed the grading, bridging, and masonry to be a less proportion of the whole work embraced in *in* the contract, then the amount of the item would have been less; had we assumed the proportion to be greater, the amount of the item would have been greater. The proportions were obtained by an estimate. There was in each mile an average of so many thousand yards to be done in the first place, as found from a computation of the whole. We also estimated the value averaged of the
509 bridging and culverts per mile; also the value of the track-laying, ties, chairs, and spike. From those data, by the simple rule of proportion, we arrived at the proportion of any one of the items to the whole. We measured all the work that has been done under Mr. Chamberlain's contract. An average of the whole work would make to each mile so many thousand yards of grading. So we divided the total estimated cost of the bridging and masonry by the number of miles in the division, and then got at the average cost of that work per mile. The items of ties, track-laying, chairs, and spike, we compute for one mile, as the cost of those is substantially the same for each mile. If, for instance, too-thirds of the grading work had been done within the space of this forty-three miles, we should have allowed, in the first place, the forty-three miles, and then we should have included in this item of "extra" the excess of grading done above the proportionate amount. In the final estimate of the engineer he had assumed, in the item of extra grading, bridging, and masonry, as a basis, the proportion of amount of work done west of New Lisbon, to the whole amount to be done west of New Lisbon, without regard to the excess of average of work done east of New Lisbon. The item of grubbing and clearing was got at by the same process; but in that item there is a broader margin for the exercise of judgment than in any other item. It would be extremely difficult to estimate exactly the proportion which the amount of grubbing and clearing already done bore to the whole amount to be done on the line. I am familiar with the ridge about where the tunnel is, and also where the thorough cut would have been. I did not run the lines, but I became familiar with the country. I suppose that I do know where the lines were run, and I believe that I have examined them all. I am prepared to say whether there would be a difference in the cost to the company of the tunnel and of a thorough cut through the ridge, at the prices respectively named in Mr. Chamberlain's contract, or at any other reasonable prices for the work. In my opinion, a tunnel

would not cost over one-third as much as a thorough cut at any point in the ridge, supposing in each case a good road to be made. The tunnel of the dimensions now fixed requires an excavation of about 14,500 cubic yards. Assuming the depth of the cut at the end of the tunnel to be fifty-four feet, and at the centre one hundred sixty-two feet, and the slope one to one, the excavation in a thorough cut between the points, which are now the ends of the tunnel, would be 813,920 cubic yards. By using sharp curves the depths of cutting might have been reduced to fifty-four feet at the ends, and one hundred feet in the centre, or thereabouts. On such a line, with a slope of one to one, the excavation would be 386,400 cubic yards.
510 The approaches would be additional, and would be the same in all the cases. If the rock were hard enough, in the case of the last line, (with short curves,) to stand a slope of one-half to one, the excavation would be 220,435. This, too, is estimating it only 1,330 feet to get through. If the short curves were used, the length of the cut would be increased thirty to fifty feet, and the excavation would of course be more. The cut with these sharp curves would not be so valuable, and a road with a thorough cut would in no event be as valuable as with a tunnel, for the reason that the slopes of a one hundred or one hundred and sixty feet cut would cover a broad expanse, and in a rain storm a large body of rain would fall in there, and, running down, make a torrent through there that would make it almost impossible to keep a track there. In winter the snows would fill up the cut to a great depth.

Question. Do you know how the prices in Mr. Chamberlain's contracts compare with those in other contracts let at or about that time, within a season or two, taking into account all the circumstances then existing?

(Objected to by Mr. Lynde as irrelevant and immaterial.)

Answer. The only contracts that I know of to which I could compare them, (having been let about that time,) are those of the La Crosse Company with Mr. Cleveland, and Mr. Chamberlain's prior contract with that company. I was engineer when Mr. Cleveland was acting under his contract with that company. Taking the appearance of the works in the two contracts at the time they were taken, I should have estimated that Mr. Cleveland's contract would yield the greatest percentage of profit. I do not speak of the way that the work proved, but as it appeared at the time it was let, and as it would have been sublet for at that time. I have made a calculation of the two, putting them both upon an equal basis, estimating from the appearances at the time of making the contracts, and have computed the cash cost of the work. On Cleveland's contract I have made the following estimate:

| | |
|---|---|
| Earth excavation, 218,000 cubic yards, *a* 25 c..... | 54,500 00 |
| Hard pan, 20,000 c. y., *a* 30 c. extra..... | 6,000 00 |
| Cross-ties, 7,000, *a* 20 c..... | 1,400 00 |
| Government duties, $66,000..... | 66,000 00 |
| Bridging and culverts..... | 3,000 00 |

| | |
|---|---|
| Frogs and switches | 1,000 00 |
| Chairs and spikes, 342,500 lbs., *a* 4½ | 15,412 50 |
| Track-laying, 46 miles, *a* $300 | 13,800 00 |
| Estimate cost of work | $161,112 50 |

511 Amount to be paid for above work, $336,453. $336,453 divided by $161,112 50 is $208, showing a profit on Mr. Cleveland's contract of 108 per cent. Deducting 20 per cent. discount on his securities, leaves 67 per cent. profit on Mr. Chamberlain's contract. I estimate the cash cost:

| | |
|---|---|
| Earth excavation, 20,000 cubic yards, *a* 25 c. | $5,000 00 |
| Ties, 2,400, *a* 20 c. | 480 00 |
| Masonry and bridging | 1,500 00 |
| Chairs and spikes, 10,000 lbs., *a* 4½ | 450 00 |
| Track-laying | 300 00 |
| Cash cost per mile | $7,730 00 |

Showing a profit of fifty-five per cent. These estimates are made from the appearances of the work to be done at the time the contract was made.

I have estimated the amount (in Mr. Chamberlain's contract) of earth work at 20,000 yards per mile, because everybody then supposed than there would be more than that. The only profile then in existence showed much more than that.

MONDAY, 4 *October*, 1858.

By taking time, engineers can generally make a very good approximate estimate of the amount of work done after it is completed. There might be cases—as, for instance, in a sink hole—where they could not come anywhere near the true amount. It would not be likely to be perfectly accurate in any case. It would be extremely difficult to classify work when excavations are opened; the material, on exposure to the weather, often changes.

You could not ascertain the amount of ballasting without having the measurements of the pits from which the gravel was taken, or you must have the original surface of the pits, and then measure them. Mr. Woodward and I were engaged in our measurement between two and three weeks' hard work and constant application. It would have taken us, having a party of three or four, from two to three months of well-applied time to have made such an approximate estimate, not having the original field notes or other papers.

FRIDAY, 29*th October*, 1858.

*Cross-examined.*

I am not now engaged upon any road. When employed to make this re-estimate I was not engaged upon any road, but was attending

to my business at La Crosse. There was not, to my knowledge, any person employed by Mr. Cleveland, or any other creditor, to take part with me in that re-estimate, nor so far as I know any notice
512 given to Mr. Cleveland, or any other creditor, to be present.

The statement (schedule C) is the estimate of the work which had been done up to October 1st, 1857, as near as we could get at it. Men were working between New Lisbon and Tomah when we were making our estimate. The track was then laid, I think, about ten miles beyond the forty-three miles mentioned in our statement.

I had no means of telling what work had been done before October 1st, 1857—what work after that, except the appearance of the work, and the assurances of those with whom I was associated. We could not, of course, tell from the appearance of the work whether work had been done in the middle of October or before the first of October. I relied substantially upon the statements of my associates. Some of the work, however, indicated plainly that it had been done before the preceding winter. I understood, as I have already stated, that there was a little track to lay to make up the 43 miles. I am not now able to give the items for which we make the deductions named in the statement. I think a good portion of the amount was for ballasting. I think but little was to be done to complete the grading and track-laying. We were engaged between two and three weeks in making the surveys and re-estimates over most of the work. I compared the field notes and profiles with the work itself. I did not measure every excavation and embankment, but wherever there was any apparent discrepancy between the field notes and the appearance of the work I examined them carefully, and made the necessary measurements.

We were engaged only about eight to ten days in the field in making the actual surveys and measurements; we spent about half of that time, or a little more, say five days, on the 43 miles, I should think. I could not tell what proportion of the embankments in that 43 miles we actually measured. I was usually content, when I came to an embankment, if it was of full width and apparently of full height, with making two or three measurements to satisfy myself of the accuracy of the field notes, and that the quantities mentioned in the field notes were really there. If you measured two or three points, and found that the embankment was of the right height and width, such points being two or three hundred feet apart, you could with the eye very readily detect any serious discrepancy between the work done and the field notes. I could not say that we actually made such measurements in every case; there may have been some slight embankments where I made no measurements; in some I satisfied myself with measuring the height only. I started with this idea, that I must look at
513 the thing closely enough so to satisfy myself that there had been no collusion between the contractor and the engineers. The statements made to me by them I endeavored to compare by the appearance of the work itself. The work from Portage City to a point four or five miles this side of Kilbourn City I did not examine so minutely as the rest of the work, because they had been completed a year or more, and I relied more on the field notes along there; still I there made such examinations as satisfied me that they were substantially

correct. I made memoranda in the field books of the assistant engineer when I found any variations. I took those notes with me, and when I found them correct I made no memoranda ; when I found variations, I made in them the memoranda. I made no other memoranda of our examinations.

On reflection, I now recollect that we did have other memoranda. The tunnel work, and all west of that, we kept in a different way. I don't know what has become of those memoranda. I do not know whether I gave them to anybody. I did not count them of any particular value after I had completed my estimate and report. I may have them in my office in La Crosse. I have some papers there. I don't remember when I saw them last.

The profile is the surface of the ground and the grade lines put on to a scale. It marks the line to be graded, and the natural surface as it is. Only the centre line is given, not the side lines. It is the centre longitudinal section of the road.

The field notes made before the contract is let are the original field notes from which the profile is made. I did not have those. They would be of no use to me, so long as I had the profile. I had the working field notes of the assistant engineers. The working field notes contain the depth of cutting or filling at the centre and slopes, with such intermediate depths as are necessary to show the original surface of the ground, the distance of the slopes from the centre, and the quantity contained in each station or half station, (depending, of course, upon how often they have taken the cross sections.) Cross sections are the measurements taken of the depth and width of the cutting or filling, showing the appearance and dimensions of a transverse section of the work. The field notes show you everything, in short, necessary for calculations. Whenever the surface departs from a plane, the field notes show the height or depth and other dimensions of the new grade. When you come to rock cutting, the assistant engineer should, after the rock is stripped of the earth, take a second set of field notes, showing the cross sections of the solid rock. We could not test perfectly the centre line of the road. Still, if the ground was level on each side of the road, we should naturally infer
514 that the surface was level where the road lay. We could measure accurately the outer slopes. The inner line was matter of estimate from the general appearance of the ground It is the same thing with excavations and embankments.

If there is between slope stakes a great elevation or depression, you cannot fully test the accuracy of the centre line. It is just as likely to be a plane in an excavation as in an embankment. It is just as likely to be irregular in one as in the other. In most instances you can trust to appearances to a great extent. If between slope stakes there is a mound or a gully, the slope stakes would not of course show the work done, and you would have to rely upon the field notes. So if the road went through the centre of a mound or ravine, you could not exactly ascertain the height or depth of the centre, except from the field notes.

But the surface of a hill is as likely to be a plane as a level surface. The country from Portage City to New Lisbon is a plane surface

generally, except a few miles about Kilbourn City. Taking into consideration the whole surface of the grounds, I think it possible that there might have been an error of five per cent. in the field notes which we could not have detected. I do not think that there was any error. I do not remember who made the original field notes and profile.

When a survey is made, the man who runs the line usually keeps the minutes of survey, the courses, and distances. The person who takes the level puts down the heights and depths on profile paper. He puts down the surface of the ground on profile paper. The notes of those measurements constitute the original field notes. These we did not need, because the field notes of the assistant engineers embrace all those and a good deal more. I do not, of course, mean to swear that the original field notes were correctly given—the working field notes which we had. They were there, but I cannot say that they correspond with the original field notes.

The original field notes would not show the grade. I cannot recollect precisely how many miles of track to be laid are included in the items of "deductions" in our report.

My impression is that it was not over four miles, but that is merely an impression. I cannot tell how much the item of ballasting was. My impression is that there had been but little ballasting from Manston to New Lisbon, seven or eight miles. This side of Manston, also, there was a portion of the road which had only a little ballasting. Such was the state of the road in March last, and such, I understood, had been the case in October before. I cannot state the gross amount deducted for ballasting. I cannot state now more particularly as to the amount of ballasting yet to be done.

The road was to be divided into three divisions of about 34
515 miles each. A section is a portion of the road, usually about one mile; sometimes a little more, and sometimes a little less. I observed in our survey the nature of the ground. I could not say upon how many sections the material for ballasting might be found. There might have been five or six sections. There might possibly have been more, but I don't think there were; I did not examine particularly with a view to ascertain that. I could not now tell, but I should think that there was but little of the road between Portage City and New Lisbon where the surfacing or ballasting had been thrown up from the sides. I did not keep this in my mind all the time, but I should have noticed if it had been so. I remember a few instances of that kind, and but few. You could only ascertain that state of things by the appearance of the materials.

Whenever the materials on the sections might have been so used they were so used, or at least should have been so used. I should think, from the appearances, that from Portage to Kilbourn City most all the ballasting had been hauled on by the train; from how far I cannot say.

I don't remember how much of the ballasting from Portage City to Kilbourn City we estimated had been done by October, 1857; I think from three-quarters to seven-eighths; perhaps all. In making our deductions we estimated some portions of the grading in the neigh-

borhood of New Lisbon as having been unfinished in October, 1857; also some of the embankments near Kilbourn City were rather narrow, and deductions were made for those.

I could not now say how many yards we estimated as deduction. In estimating the value of the grading, ballasting, and track-laying, and the other matters included in the "deductions," I intended to charge Mr. Chamberlain the full price which he got by his contract, and even something more.

Question. In estimating the amount to be allowed for any given number of yards of grading ascertained not to have been done, how did you get at the amount which should be allowed to the company according to the terms of the contract?

Answer. I have stated that we did not get at the number of yards particularly, but that we lumped that, intending to put on a price that would fully cover the deficiency. We made an estimate on that point as we went along, at prices something greater than Mr. Chamberlain was to receive. He contracted to build the road from Portage to La Crosse. He was to do the grading, bridging, and masonry, and furnish ties, chairs, and spikes, and lay the track, for $12,000 per mile. After the line had been surveyed, and profile and estimates made, we found there were about so many yards of grading to the mile; I forget now how many, but I think 14,000 or 15,000 as it proved. We estimated as near as we could the cost of the grading,
of the bridging and masonry, of the ties, chairs, and spikes,
516 and of the track-laying per mile, which was less in the whole than $12,000 per mile.

We then estimated the actual cost of the grading of the line, and thus got the average cost of the grading per mile, which I think we estimated at about $3,800 per mile, although I am not sure.

The cost of bridging and masonry I think we estimated at somewhere from $1,400 to $1,500 per mile; ties were $500 or $600; track-laying from $300 to $350; chairs and spikes from $500 to $700; making a gross sum of, say, $6,500, leaving a balance for profit; adding to the cost of each item as above a proportionate amount for profit, and we have the basis of contract price for each item as we estimated.

The bridge at Kilbourn City was not included in Chamberlain's contract, as I am aware. I do not know whether the divisions were precisely equal to each other in length. We did not take them much into account in making up our estimate.

Question How many bridges are there between Portage City and Kilbourn City?

Answer. I do not know of any except a pile bridge, which was extra. There are some culverts, and pretty large ones.

I could not tell the cost of the pile bridging between Portage City and Kilbourn City. I should think about two thousand dollars.

Between Kilbourn City and New Lisbon there are a number of bridges. I do not now recollect how many. I could not tell how much they cost. I don't think we made a particular estimate of the cost. We made a relative estimate of their number and character in comparison with the number and character of those yet to be done. I

have not now any recollection of the number and character of the bridges between Portage and Kilbourn City from which I could make even an approximate estimate *estimate* of their cost. I am not sufficiently familiar with them to do that.

I can't now tell the value of the masonry between Portage and Kilbourn City. There were some culverts at Kilbourn City, but I have not now any definite idea of the cost and extent of them.

I did not see them there before the first of October, but I am very well convinced that they were there, because the earth could not have been put over them between October and March. I cannot now tell where the culverts were.

There are culverts all along the line of any railroad. There must be a culvert under almost every embankment.

I remember some, particularly at Kilbourn City, where there were several deep fills.

I cannot tell what was the average grading from Portage to New Lisbon. It was more than the average from Portage to La Crosse. I think it was more than 16,000 yards per mile. I should think not more than 18,000 yards per mile. My impression is that it was about
517 18,000. I may be mistaken, as I have no data whatever. The average of the first division west of Portage (34 miles) would rather exceed 18,000 yards, I think, say 500 yards, as the grading from 34 to 43 miles west of Portage was rather light work. A part of the grading mentioned in the item of grading, bridging, and masonry, $151,000 and odd dollars, (the third item,) was the excess of the average quantity from Portage City to New Lisbon. A part was between New Lisbon and Tomah, (18 miles from New Lisbon.) A part was at and near the tunnel, and there was work scattered along the La Crosse valley. I mean by the excess, that if he had contracted to build 100 miles, and that had proved to contain 100,000 yards, and he had built 40 miles and done half the grading, then he would have done an excess of grading in proportion to the number of miles completed. The excess on the 43 miles is the excess of work done on that piece over $\frac{43}{100}$ of the whole work. We did not, in estimating that excess, deduct the amount of cubic yards of solid rock and loose rock excavation, that I remember, from the gross amount of the grading on the 43 miles.

The bridging was done all along where the grading was done. I think, in making up the "extra" item of grading, bridging, and masonry, we took in none of the bridging within the 43 miles; it was all west of that, I think.

I don't remember that there were any bridges complete west of the 43 miles.

There were some culverts; they come in under the head of bridging.

I could not tell how many culverts; there might have been ten or twenty. The entire item is, I know, chiefly composed of grading. We made no actual measurement of the culvert work and masonry, any further than comparing the amount of work done with the work which remained undone. I have no present recollection of the amount or cost of the work done.

As to the fourth item, extra haul, we found this all along the line

from Portage to La Crosse I should presume that two-thirds, perhaps three-quarters, was between Portage and New Lisbon. As near as I can recollect, it averaged about the same all along from Portage to La Crosse, in proportion to the amount of work that had been done. We got at the amount of extra haul from the profile and from the statements of the resident engineers, Howell and Staughton, that the earth from the excavation had been deposited on those embankments, and from the appearance of the earth, that such had been the fact. I don't think we measured the borrowing pits for the purpose of getting at the amount of ballasting; I think we measured them for the purpose of getting at the grading. The most extensive borrowing pits were at Kilbourn City, and they were the principal ones.

There were several along there, within a space of two or three miles, where the country is pretty level, and there has been a borrowing pit. A measurement of the embankment will indicate the amount of work done; but where there is a side-hill cut, or the earth has run off
518 into the water, it is necessary to measure the borrowing pit or excavation. The earth from the excavation was principally but not all used in filling, I think. I don't recollect any instance of earth being wasted except at the tunnel, and there we did not attempt to distinguish between earth which had been wasted and that used in embankment. I think the longest haul was between 1,800 and 2,000 feet; I did not keep the memorandum, although we made one, in regard to the distance and amount of the extra haul; Mr. Staughton had it here. This work was principally done east of New Lisbon, as I understand, before the 1st of October. West of that point, at least west of the Red Mills, (three or four miles west of New Lisbon,) there had been but little work done, as I understand, by the 1st of October, especially from the Red Mills to Tomah. From Tomah to La Crosse the work stood just as it was the 1st day of October, 1857, as had been represented to me, and as appearance would indicate. I have no doubt about it, although I cannot swear to it. From New Lisbon, about ten miles west, the road was being run for construction purposes in March, when we made our examination. I got my information as to the amount of work that had been done on the 1st of October from Messrs. Howell, Staughton, and Woodward.

As to the solid rock excavation, I think that was all east of New Lisbon. I remember, now, there was a small cut west of the tunnel.

We got at the amount of the rock excavation by actual measurement. I don't now remember the amount west of the tunnel. It was a small cut, not exceeding 3,000 yards. I relied to a small extent on the field notes for data, and only to a small extent. The surfaces of the cuttings were in a good many instances decomposed. I did not take the field notes as correct, until I had dug with a shovel in beyond the action of the frost, and satisfied myself of the amount of the solid rock work. The field notes appeared to indicate a greater amount of that work than had actually been done; but such examination satisfied me that they were generally correct in that respect, and I had very little occasion to make any alteration in their figures. The rock was sand rock of different degrees of hardness. That was the prevailing character of the rock. I consider this sandstone. It

is rock which, being exposed to the weather, becomes sand. It is different from the sandstone used in building. There is no slate about it; some of it was in layers; most of it was in masses or in thick layers. It is not all laminated, although some is. I made memoranda of those measurements. I don't know where these are. I suppose they are in existence. As to the loose rock excavations, I took them from the reports of the assistant engineers entirely.

As to the roadway bridges, there was one at Portage City, that is, over the road. There is one at Kilbourn City, under the road. These were the principal ones There were others which I don't now re-
519 member. I think the bridge under the road was allowed at some six or seven thousand dollars. The other one, I think, at some four to five hundred dollars. Such is my present recollection. I did not make a very close estimate of the number of yards in the largest bridge. It was returned to me, and I satisfied myself that the amount was about correct. Then Mr. Woodward and I fixed a price. The work was stone. We deducted from the estimated cost of the bridge the estimated cost of a culvert which it would have been necessary to put there, and allowed only the excess.

As to cattle passes, in the same item, I don't recollect particularly about them. They were all east of Red Mills.

As to changing highways, a highway was changed for some distance near Kilbourn City. It was necessary to grade a new one for some distance, instead of constructing a bridge either over or under. I don't now remember how much that cost, but my impression is it was about a thousand dollars.

I mean by "excavation of foundations," in the next item, excavations for the foundations of the bridges, culverts, &c. I did not investigate that matter a great deal. I took the engineer's returns for that. No man can tell, after the bridges are up, the amount of excavation for the foundation and the timber in it. I made some examination of the bridges in reference to this item. I considered, from what I knew, that the amount of work reported had been done, and the timber reported had been put in. I could not ascertain more certainly than I did.

As to the bank wall, most of it is at Kilbourn City. I think there was a very little two or three miles west of there also. It was mostly in one place, I think. It is near the tunnel culvert I did not measure those walls myself. I had to take the amount from the return of the assistant to the chief engineer. You could not measure it, nor make an approximate measurement. You could not tell the thickness. Some of it went down under the water. You could not, when I saw it, measure the superficial surface of it. It was mostly covered with earth and water. I don't remember particularly about it. I know that there was part of a wall there. I don't know whether all was there which had been built, or whether a part had been carried away. I did not try to measure the bank wall, for I could not do it.

SATURDAY, 30*th October*, 1858.

I saw but very little of a bank wall. I don't know that I saw 100 square feet. I satisfied myself by the engineer's statements that the

amount reported had been put in. I don't know now whether it had given way or not. I found there had been a good deal of bank wall put in which had failed.

From Portage to Kilbourn City the country is generally open, not heavy timbered; some is marshy; some with openings; some is sandy, in the neighborhood of Portage especially.

520 There is considerable timber near Kilbourn City—a belt three or four miles wide. We would call that oak openings; still it approaches the character of a forest. Beyond there, towards New Lisbon, the country is lightly timbered. It is oak openings. From New Lisbon to the tunnel it is marshy, with tamarack and pine—what you would call heavily timbered. This commences about four miles beyond New Lisbon. I don't know that the grubbing of tamarack is any more difficult than other species of timber. From the tunnel to Sparta it is a heavy gray pine country. From Sparta to La Crosse the country is very lightly timbered; in some places prairie. The distance from New Lisbon to the tunnel is, I think, twenty-four miles. I think it is twelve miles from the tunnel to Sparta, and from there to La Crosse is twenty-six miles. I should think one-third of the grading from Portage to Kilbourn City consists of simply throwing earth from the sides to the centre, what is technically called side work. I don't think, on reflection, that one-third of it is side work.

The work near Kilbourn City, this side, is very heavy. There is heavy work for about five or six miles on both sides of Kilbourn City. The earth is there obtained from excavations and borrowing pits; the cuts and fills are not unusually long there.

There was some rock excavation near Manston; some west of the tunnel, but principally within the five or six miles near Kilbourn City. To know the amount of grubbing and clearing which had been done by the 1st October, 1857, I had to rely on the statements of the engineers.

I measured myself the tunnel approaches; the number of yards stated in our report was the result of our measurement. I don't recollect of deducting anything for work done since the 1st October; the approaches were not complete; a portion of the excavation there was sand and a portion of it sand rock. I could not now tell what was the proportion of each, as we did not attempt to classify it—possibly a third of the quantity might have been sand. Sand rock is sometimes blasted; I have never seen a blast made there; no work was being done at the tunnel when I was measuring there. I have never seen that rock worked; when exposed to the atmosphere it becomes coarse white sand; I don't think I relied entirely on the statement of the engineers that the work had been done before the first of October; the work itself showed that it had stood through the winter; the common report there was that the work had been stopped before first October; the price, $2 per yard, we took from the contract. The pile bridging was between Portage and Kilbourn City; there were some two or three pile bridges there; I could not now tell how extensive they were; when we saw it, there was only water there; I should presume it would take 16 feet piles, but I don't know; I don't recollect how we allowed the cost, whether by the pile or by the foot;

521 we estimated what we thought the cost, but whether by the foot or by the pile I don't now remember; I presume by the lineal foot. I do not remember any of the items connected with that; we got at the value of the tunnel culvert at Kilbourn City from the reports of the engineers of the labor expended there; that was my only source of information; I did not particularly examine it; I did not measure the work myself of grading at Kilbourn City; I took the notes of the engineer who had measured it, and satisfied myself that they were right; I don't recollect the price we allowed per yard.

I only know the amount of the damages for detention and change of line at New Lisbon, because the engineer told me that Mr. Chamberlain had been obliged to pay that amount; I did not notice particularly the point where the change was made.

I was engaged in engineering from 1844 to 1856; I never was connected with Mr. Chamberlain; I don't know that I have ever had anything to do with Mr. Chamberlain's work until I made this re-estimate, except that some ten years ago I made the final estimate on some work he had done in Vermont.

I was engineer on the road when Mr. Cleveland took his contract; the soil on the portion of the road included in his contract was clayey; I think about a quarter of it was hard pan, but I don't recollect certainly; his contract embraced about thirty-three miles of grading, I think, including the finishing of work previously commenced; he was to pay duties on the iron, not exceeding $66,000; he was to lay track to Rock River, from a point about seven miles from Milwaukee. I think I should rather take out the sand rock than the hard pan; I think the surface of the country from Milwaukee to Rock River is much more rough than that west of Portage; I could not say how much grading Mr. Cleveland performed, how much he paid out for duties, nor how much he received from the company; I cannot recollect anywhere near the amount of any estimates on the road; I recollect that for work done and money paid he was estimated 208 per cent., or $2\frac{18}{100}$ times the estimated cash disbursements or cash cost of doing the work; I recollect being a witness on the trial of the suit of Mr. Cleveland against the railroad company; I do not recollect how much I then stated the hard pan could be taken out for; my impression would be that I stated it at fifty cents.

*Re-examined.*

When I was making the re-estimate, the monthly estimates previously made were not before me. The information furnished me by the engineers was corroborated by the appearances of the work.

W. R. SILL.

A.

ENGINEER'S OFFICE, LA CROSSE AND MILWAUKEE R. R.,
*Milwaukee, October 1st*, 1857.

522 Estimate of work done by Selah Chamberlain, contractor, on the eastern division of the La Crosse and Milwaukee railroad under his contract for ballasting that portion between Beaver Dam and Portage City, from commencement to date:

| | |
|---|---|
| Ballasting 192,542 yards at 40c | $77,016 80 |
| To this is to be added for filling in the bank at Fox Lake | 20,768 65 |
| Total estimate | 97,785 45 |

I hereby certify that the above estimate is correct.

E. W. WOODWARD,
*Chief Engineer.*

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. Co.,
*Milwaukee, Wis., Sept. 29th,* 1858.

I certify the preceeding to be a true copy from and the whole of the original on file in this office.

LOCK. H. DOTY, *Secretary.*

C.

*To the board of directors of the La Crosse and Milwaukee Railroad Co.:*

GENTLEMEN: We, the undersigned, having been appointed to make new estimates of the work done up to October 1st, 1857, on the line of your road from Portage City to La Crosse, by Selah Chamberlain, under contract dated January 20th, 1857, and April 30th, 1857, and also under certain stipulations for ballasting the same, respectfully report that, in accordance with a contract made on the 8th day of December last for a remeasurement of the work done on that portion of the road, we have carefully examined each of the several items of work performed, aided by the original notes and cross-sections of the work, and by such new measurements and examinations as were necessary to correctly estimate the value of the work performed, under and in accordance with the stipulations of the above-named contracts, and the following is the result, viz:

| | |
|---|---|
| 43 miles main line, as per contract, at $12,000 per mile | $516,000 00 |
| $2\frac{32}{100}$ " side track, " " " | 27,840 00 |
| Grading, bridging, and masonry proportionally equal in value | 151,900 00 |
| Extra, as per contract, hauled over 500 feet | 27,537 30 |
| Grubbing and clearing (proportional) at $300 per mile | 18,620 00 |
| Solid rock excavation, 118,557 c. yards, at 75c | 88,917 75 |
| Loose rock excavation, 2,400 yards at 50c | 1,200 00 |
| Roadways, bridges, cattle-passes, and changing highways, extra | 11,700 00 |
| Excavations of foundation, and timbers in same | 6,500 00 |
| Bank wall, 3,500 c. y'ds, at $3 00 per c. y'd | 10,500 00 |
| Tunnel approach, 739,573 c. y'ds, at $2 per c. y'd | 147,914 60 |
| Pile bridging | 2,500 00 |
| Tunnel culvert at Kilbourn City | 2,300 00 |
| Ballasting $45\frac{32}{100}$ miles at $2,000 per mile, as per stipulation | 90,640 00 |

| | | |
|---|---|---|
| 523 | Grading depot grounds at Kilbourn City | 973 20 |
| | Damage for detention and change of line at Kilbourn City | 1,121 00 |
| | | $1,106,163 85 |
| | Deduction for work unfinished at that date, but estimated in above, being track laying, ballasting, and grading | 62,000 00 |
| | | $1,044,163 85 |

(Signed) WM. R. SILL, *Civil Engineer.*
(Signed) E. W. WOODWARD, *Chief Engineer.*

MILWAUKEE, *March 25th*, 1858.

D.

ENGINEER'S OFFICE LA CROSSE AND MILWAKEE R. R.,
*Milwaukee, Oct. 1st*, 1857.

Estimate of work done by Selah Chamberlain, contractor, on the western division of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, from the commencement to the present date.

| | |
|---|---|
| 43 miles of main line completed between Portage City and New Lisbon, as per lease, at $12,000 | 616,000 |
| 2¼ miles side track with above, $12,000 | 27,000 |
| Grading and masonry equal to 9½ miles, at $10,000 | 96,000 |
| Extra on earth hauled over 500 feet | 41,400 |
| Grubbing and clearing 80 miles, at $300 | 24,000 |
| Solid rock excavation, 118,250 y'ds at $1 | 118,250 |
| Loose " " 2,400 " " 75c | 1,800 |
| Roadway and cattle-passes | 11,700 |
| Excavations of foundations, and timber for same | 6,500 |
| Bank wall, 3,500 y'ds at $3 | 10,500 |
| Tunnel approach excavation, 6,400 y'ds at $2 | 128,000 |
| Pile bridging | 2,500 |
| Tunnel culvert at Kilbourn City | 2,300 |
| Ballasting 45¼ miles at $2,000 | 90,500 |
| Total estimate | $1,076,450 |

I hereby certify that the above estimate is correct.
E. W. WOODWARD,
*Chief Engineer.*

OFFICE OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
*Milwaukee, October 1st*, 1858.

I certify that I have compared the preceding estimate with the original on file in this office, and that the same is a true copy therefrom, and of the whole of said original.

LOCK. H. DOTY, *Secretary.*

524

## E.

Copy of E. W. Woodward's memorandum of grubbing and clearing:

| | |
|---|---|
| Total No. of stations of considerable timber | 1,002 |
| Total No. of stations of scattering timber | 767 |
| Total | 1,769 |
| Total length of grubbing done in heavy timber | 304 |
| Total length of grubbing done in light timber | 240 |

To be done Oct. 1, 1857:

| | |
|---|---|
| Total No. of stations of considerable timber | 417 |
| " " " " " scattering " | 501 |
| Total grubbing to do in heavy timber | 54 |
| " " " " " light " | 79 |

## F.

Copy of E. W. Woodward's memorandum of extra haul:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Between sta. | 24 | and | 50, | 18,000 | yds., | 1,100 | ex. W. | $1,980 | 00 |
| " " | 78 | " | 108, | 9,200 | " | 1,300 | " " | 1,196 | 00 |
| " " | 58 | " | 70, | 820 | " | 400 | " " | 32 | 80 |
| " " | 140 | " | 156, | 1,265 | " | 500 | " " | 632 | 50 |
| " " | 212 | " | 252, | 8,000 | " | 1,000 | " " | 800 | 00 |
| " " | 315 | " | 345, | 8,200 | " | 700 | " " | 570 | 00 |
| " " | 345 | " | 375, | 3,650 | " | 600 | " " | 219 | 00 |
| " " | 435 | " | 460, | 800 | " | 700 | " " | 56 | 00 |
| " " | 465 | " | 503, | 3,500 | " | 800 | " " | 280 | 00 |
| " " | 610 | " | 647, | 7,500 | " | 1,000 | " " | 750 | 00 |
| " " | 659 | " | 694, | 4,600 | " | 600 | " " | 276 | 00 |
| Between sta. | 745 | and | 779, | 21,000 | yds., | 1,800 | ex. W. | 3,780 | 00 |
| " " | 780 | " | 810, | 18,000 | B, | 300 | " | 540 | 00 |
| " " | 813 | " | 824+50, | 10,000 | P B, | 400 | " | 400 | 00 |
| " " | 824+50 | " | 845, | 11,200 | yds., | 1,000 | " | 1,120 | 00 |
| " " | 845 | " | 888, | 22,000 | " | 700 | " | 1,540 | 00 |
| " " | 892 | " | 905, | 4,200 | " | 400 | " | 168 | 00 |
| " " | 904 | " | 931, | 10,000 | " | 600 | " | 600 | 00 |
| " " | 950 | " | 971, | 8,000 | " | 600 | " | 480 | 00 |
| " " | 975 | " | 982, | 3,000 | " | 200 | " | 60 | 00 |
| " " | 985 | " | 1,025, | 18,000 | " | 300 | " | 540 | 00 |
| " " | 1,061 | " | 1,079, | 4,000 | " | 600 | " | 240 | 00 |
| " " | 1,099 | " | 1,125, | 13,000 | " | 1,500 | " | 1,950 | 00 |
| " " | 1,134 | " | 1,156, | 6,500 | " | 900 | " | 580 | 00 |
| " " | 1,158 | " | 1,180, | 4,500 | " | 1,200 | " | 540 | 00 |
| " " | 1,188 | " | 1,260, | 400 | " | 500 | " | 200 | 00 |
| 525 " | 1,292 | " | 1,310, | 1,000 | " | 700 | " | 70 | 00 |
| " " | 1,325 | " | 1,340, | 2,000 | " | 300 | " | 60 | 00 |
| " " | 1,432 | " | 1,448, | 1,200 | " | 700 | " | 84 | 00 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Between sta. | 1,490 | and | 1,620, | 11,000 | yds., | 1,200 | ex. W. | 320 00 |
| " " | 1,524 | " | 1,544, | 5,000 | " | 900 | " | 450 00 |
| " " | 1,590 | " | 1,610, | 2,000 | " | 500 | " | 100 00 |
| " " | 1,641 | " | 1,663, | 1,200 | " | 1,100 | " | 131 00 |
| " " | 1,665 | " | 1,684, | 2,600 | " | 500 | " | 130 00 |
| " " | 1,685 | " | 1,708, | 800 | " | 600 | " | 48 00 |
| " " | 1,710 | " | 1,735, | 1,100 | " | 500 | " | 55 00 |
| " " | 1,940 | " | 1,952, | 3,000 | " | 200 | " | 60 00 |
| " " | 1,985 | " | 2,000, | 3,000 | " | 500 | " | 150 00 |
| Between sta. | 2,030 | and | 2,050, | 2,500 | yds., | 400 | ex. W. | 100 00 |
| " " | 2,110 | " | 2,175, | 9,500 | " | 1,800 | " | 1,610 00 |
| " " | 2,250 | " | 2,273, | 2,200 | " | 500 | " | 110 00 |
| " " | 2,300 | " | 2,340, | 1,250 | " | 1,000 | " | 125 00 |
| " " | 3,435 | " | 3,460, | 3,000 | " | 600 | " | 180 00 |
| " " | 3,480 | " | 3,500, | 3,000 | " | 700 | " | 210 00 |
| " " | 3,480 | " | 5,000, | ..... | | | | 3,014 00 |
| Total..... | | | | | | | | $27,537 30 |

SATURDAY, 6 *November*, 1858.

Moses Kneeland, being duly sworn, says:

[The defendant Chamberlain produces a contract dated 20 January, 1857; the tunnel modification thereof attached thereto, dated 30 April, 1857, of which modification a copy hereto annexed, marked H; a contract dated 20 November, 1856; one dated 26 September, 1857, being the lease, so called; and another contract of the same date; copies of which are attached to the answers, or to some of them, filed in this cause. The execution of the papers is admitted, except as to the tunnel modification, in regard to which the complainants' counsel admits the genuineness of the signatures of Selah Chamberlain and Edwin H. Goodrich.]

Edwin H. Goodrich was vice-president of the La Crosse and Milwaukee Railroad Company on the 30th day of April, 1857, when the tunnel modification contract, here produced, was executed. I did not see the contract executed. I referred to the meeting of the executive committee. I left the next day after that meeting. In April, 1857, the executive committee of that company was composed of Byron Kilbourn, Edwin H. Goodrich, Garret Vliet, Samuel Brown, and myself. The subject of making a contract for the tunnel was considered in the executive committee in the last days of April, 1857. Mr. Goodrich, Mr. Vliet, and myself, Mr. Woodward, and Mr. Chamberlain were present. The executive committee directed a tunnel to be made. I could not tell you all the details. One particular point as to the
526 price arose. The price per yard for tunnel work was the principal thing under discussion. I recollect there being talk about the sinking shafts, packing, and anchoring; but there was more discussion on the tunnel work itself.

These prices named in the modification contract were the prices agreed upon. They were the prices named in his proposition for the original contract. We then thought we should not have to tunnel it,

but Mr. Kilbourn, and Mr. Woodward made up their minds that a tunnel would be necessary, and Mr. Kilbourn wrote in to Mr. Goodrich to that effect. Mr. Goodrich called the executive committee together. Mr. Woodward had a sort of an estimate. He had estimated the tunnel work at $3 a yard. Mr. Chamberlain said he could not do it for that, and would not take it. I asked Mr. Woodward how that estimate was got up. He said by him and Mr. Kilbourn, when they were out at the tunnel. That they did not include any profit. Mr. Chamberlain wanted $6 a yard. We proposed in the discussion to add to the estimate $1 a yard, making it $4 a yard. He finally said that his last and best proposition would be $5 a yard for the tunnel work under his old proposition. I think the executive committee were in session two days. We advised about it with Mr. Woodward, and finally deemed it advisable to take that offer. There was a good deal of discussion as to what material might be in the ridge, whether shell rock, or openings in the rock, or something else. We agreed, finally, upon the price named in the contract, $5 per yard, in consideration of the risk he took in the material.

The executive committee passed a resolution ordering the contract to be entered into. I should consider this as substantially the contract or deed to be executed. I think these are the prices agreed upon. I never saw the tunnel modification contract before. The executive committee directed Mr. Goodrich to execute the contract.

When the contract was made with Mr. Chamberlain, in January, 1857, for completing the road to La Crosse, he submitted a proposition for doing the work. Mr. Cook (C. D. Cook & Co.) also submitted a proposition.

Question. Whose was the best?

(Objected to as immaterial.)

Answer. Mr. Chamberlain's. The principal difference was in chairs and spikes, which Mr. Cook did not propose to furnish.

I think his proposition was $11,900 per mile without the chairs and spike. Chamberlain's included the chairs and spike. Then there was a difference in what we call a drawback in the rock and earthwork in Chamberlain's, and there was none in Cook's proposition. I think also, that Cook's haul was less than Chamberlain's. As a whole, Chamberlain's was the best proposition for the company, I thought.

I had no interest in Chamberlain's contract, either for the tunnel, or for the western division.

527 (Mr. Brown, complainants' counsel, objects to the testimony of this witness on the ground that he is charged by the bill with being interested in Chamberlain's contract, and on the ground that he is interested therein.)

*Cross-examined.*

I have been connected with the La Crosse road since the winter of 1854—January, or February, 1854—and before that with the Fond du Lac road, from the organization of the Milwaukee, Fond du Lac, and Green Bay Railroad Company.

I think I was one of the committee who negotiated the consolidation of the Fond du Lac and La Crosse companies.

Question. How much stock did you have in the Milwaukee, Fond du Lac, and Green Bay Railroad Company, four months prior to the consolidation?

(Objected to as immaterial.)

Answer. I don't know precisely how much I had.

Question. Did you increase the amount of stock you held four months prior to the consolidation, up to the time of consolidation?

(Objected to as immaterial.)

Answer. I presume I did.

Question. Did you ever become the owner of one hundred shares of stock, issued to Cook, or *or* Cook and Sherwin?

(Objected to as immaterial, so far as Chamberlain is concerned, and incompetent as to the other defendants.)

Answer. I think I did.

Question. From whom did you receive the certificates of stock?

(Objected to for the same reason as before, and also, that it is not proper cross-examination.)

Answer. I think I received them from C. D. Cook. It was either from him or James Kneeland. I think from C. D. Cook.

Question. How did you receive it?

(Objected to for the same reasons.)

Answer. From one of them personally.

Question. What consideration did you pay for it, and when and how?

(Objected to for the same reasons.)

Answer. I will produce Messrs. Cook & Sherwin's receipt in answer to that question. The body and signature are both in the handwriting of C. D. Cook. This receipt was actually given on the day it bears date, the tenth of October, 1853. At the time of taking the receipt I gave him some money and my due bill for the balance. I paid him, in all, six thousand dollars in money for that stock. I think he made me an allowance out of that for a service I performed for him. I went out to Madison and got a bill through for him. I think, however, the principal part was money. The going out to Madison was in connection with the consolidation bill. That was in January, 1854, I think. He allowed me, I think, about $200
528 or $300 for going out to Madison.

I think I paid him about $1,000 in money, and about $5,000 in my due bill. I don't remember exactly. I don't recollect whether I paid him in bills or a check. I think there was a $400 check, and the rest was in bills. I think the check was on Townsend & Finkler. It must have been there or Kneeland and Hull's. I can't tell how I paid the remaining $5,000, for which I gave my due bill. This paper, marked G, is a true copy of the receipt I have mentioned. (Paper produced, marked G, and hereto attached.)

I did not know at the time I received that stock that James Kneeland owned that stock, or that C. D. Cook neither owned nor claimed any interest in it. I was informed by James Kneeland that he had

a contract with Mr. Cook to cash the securities, but I think it was after that date.

I think I first saw Mr. Selah Chamberlain to know him in the fall of 1854. I was in the board of the La Crosse Company, which gave him and Alden his contract the first time. I was in the board at the time they declared Mr. Cleveland's contract void.

(All the testimony subsequent to the answer of the last question is objected to for immateriality, and is taken subject to that objection.)

MONDAY, 8*th November*, 1858.

I know James Ludington, one of the defendants in this suit.

Question. Do you recollect the fact of a sale of school lands made by him to the La Crosse Railroad Company some years ago?

(Objected to as immaterial and incompetent.)

Answer. I understood there was such a sale. I was a director at the time, and so was he I think I did not vote for the purchase, and did not know anything about it at the time. I could not state how much the board gave him for them. I can't state. I have no knowledge whether any other persons than Ludington were interested in the purchase of those lands from the State, or in the sale of them to the company. I think this was about 1854, but I am not positive. I did not have much to do with the company then. I afterwards besame the owner of some of those school lands, about eleven hundred acres, in Crawford county. I understood from Dr. Judd, the president, the price, but I do not know otherwise. I gave for the company's interest in the land $123\frac{74}{100}$ acres of land in Racine county, free of incumbrance, worth about $2,000 at that time.

I do not know who is now the owner of that land, but I suppose the company is. I do not remember the description of it. These are all the lands purchased from the company. Some of them may be in Bad Axe county. Mr. Dawes purchased quite a large amount of those lands.

A man in Hartford took some. A man in Ohio, Mr. Whittemore, took some in payment of a debt due him. Mr. Mariner took
529 some. I think they were all sold or exchanged for other lands. I don't know that any other director bought any. I think E. C. K. Garvey bought some, and Crampton also. When I took mine the understanding was that I might exchange them for others that I should select, but before I got a chance to make the selection they were nearly all sold.

(The foregoing evidence, since the last question, is all taken subject to the defendant's objection for immateriality.)

I don't know that I at first favored Cook's proposition any more than Chamberlain's. I don't think that just previous to a meeting of the board, or during such meeting, Mr. Alden asked me to go out and talk with him.

Question. Do you know, either of your own knowledge or from any facts or circumstances, whether Mr. Chamberlain gave to any member of that board, directly or indirectly, any gratuity, sum of money, or thing, either in action or possession, either as a recompense for

having aided him, or as an inducement to aid him in getting that contract, or for any consideration growing out of that contract?

(Objected to as irrelevant and immaterial, and not proper cross-examination.)

Answer. I don't know that I have any knowledge or recollection of any such transaction.

Question. Has any director of the La Crosse Railroad Company, to your knowledge, had any interest, direct, or indirect, either in the contracts which Chamberlain had with that company, or in any of them, or in the profits of such contracts, or in the results or moneys received from such contracts?

(Objected to for the same reasons.)

Answer. None to my recollection. I don't believe there was any.

Question. Have you yourself ever been the owner of any note, bond, or other security; or have you had in your possession any note, bond, or other security, issued or given by the La Crosse Railroad Company, under or in pursuance of any contract with Chamberlain?

(Objected to for the same reason.)

Answer. That is a pretty broad question. I don't know what bonds, stocks and such things he might have had at some stage. I don't know but I have had such, and I don't know that I have.

Question. Have you ever received from him or from Mr. Goodrich anything of that nature, issued to him under any of those contracts?

(Objected to for the same reasons.)

Answer. I don't think I have, nor from any other person.

Question. Have you ever yourself, directly or through the agency of a third person, sold or disposed of any stocks, bonds, notes, or other securities issued by the company under the contract with Chamberlain?

(Objected to for the same reasons.)

Answer. I can't say. I might or might not. I have no recollection of it now.

530 Question. Do you recollect the last report made by the company before the land grant?

Answer. I think there was a report made in the spring previous to the land grant, and one afterwards.

I think the report previous to the land grant was got up by Messrs. Kilbourn and Strong. I cannot say whether I, as a director, voted for it. I presume the report represented, according to my understanding, the situation of the company at that time. I recollect that after the land grant a report was also made, about January, 1857. I presume I voted for the report, but I can't say whether I did. I presume it then represented the condition of the company, as I then believed. I recollect I then thought the appraisal of the lands too high, but I had no knowledge about them. I can't say whether the change in the contract with Chamberlain, in regard to a tunnel, was reported to the board; I have no recollection about it; I was away. On reflection, I wish to correct my statement as to Kilbourn and Woodward's estimate of the cost of the tunnel work. I think it was $3 50 or $3 75, instead of $3. Mr. Woodward reported the price. Mr. Kilbourn was then at St. Paul. Mr. Woodward was appointed

chief engineer of the road in February or March, 1857, according to my best recollection. He was first employed as a division engineer, immediately after procuring the grant. I don't think he was engaged on any road when we appointed him. I don't think he was appointed at Chamberlain's instance; I think it was at Farwell's instance. I don't know whether or not he had ever been on a road which Chamberlain was connected with. I think Mr. Woodward, after he was appointed chief engineer, had charge of the western division of the road. Before that Mr. Kilbourn was chief engineer, and before that Mr. Sill.

Question. What amount of the bonds of the company, after the land grant, were issued to persons not directors of the company, and what amount to each director?

(Objected to as irrelevant and immaterial.)

Answer. I can't say that any issue was made to outside parties or directors. I can only say that a million of bonds were issued for charter expenses, for right of way, depot grounds, and other expenses. I don't think any were issued to directors or others. I think the executive committee appropriated, of bonds of that issue for services and indorsing the company's paper, &c., to Charles E. Jenkins $25,000, to Moses M. Strong, to Edwin H. Goodrich, and Moses Kneeland, each $25,000. This is all that I recollect. The bonds that I received were received for extra services and to apply in part payment for indorsing and bonding iron for the company. Those bonds are now in the hands of the company cancelled, and have been for some time. I suppose I returned them some time last winter. I have now a claim against the company for indorsing for it, and bonding
531 its iron. There was before that time an appropriation to me in stock of $2,000 or $3,000 on account for indorsing. My account against the company is over $40,000.

I have, I think, been on over three millions of paper for the company. I was not here when the judgment was entered in favor of Chamberlain; I was in New York. I think I was here at the time of the purchase by the company, of Kilbourn, of what was called "the canal lots;" I think that was in 1856; I may be wrong, but that is my recollection. I don't know that I can state the amount; I think it was $50,000 or $60,000; it may be more, it may be less. I think I was in the board at the time that the $50,000 were voted to Mr. Kilbourn. It was passed by the board.

I never, to my recollection, stated to Frederic J. Gates, of Albany, after the judgment was entered in favor of Chamberlain against the La Crosse Railroad Company, that the whole amount of it was not due to Chamberlain from the company, or anything to that effect.

I have been on all the bonds of the company for all the iron from Milwaukee to La Crosse.

MOSES KNEELAND.

E. W. Woodward.

Interrogatory. What is your profession?

Answer. I am a civil engineer. I reside in Warren county, Ohio. I have been engaged in that profession thirteen years. I was chief

engineer of the La Crosse railroad from February, 1857, to October 1st, 1858. I know of Mr. Chamberlain, one of the defendants, having contracts on that road. The contract on the eastern division was for ballasting between Beaver Dam and Portage City. That on the western division was for the entire construction, with the exception of the iron rails, which were to be furnished by the company. As chief engineer, I estimated the work done by him on the eastern division, under his ballasting contract. There is a copy of the estimate, now shown to me, and marked "A." This is the final estimate, and shows, besides the ballasting proper, the allowance made by engineer and the executive committee for pile bridging at Fox Lake, and afterwards filling in the same with earth. The work estimated in the final estimate was performed by Mr. Chamberlain. There was a sink hole at Fox Lake which required a large amount of earth to fill in. As chief engineer, I made monthly estimates of Mr. Chamberlain's work on the western division. I made an approximate final estimate on October 1st, 1857. I now hold a copy of that final estimate here; it is marked "D;" it was made at the request of Mr. Palmer, who was then, I believe, vice-president. This request was made by him, I should think, about four days previous to 1st October, 1857.

What directions did Mr. Palmer give you at that time?

(Objected to by Mr. Finch, solicitor for complainant, as ir-
532 relevant and immaterial.)

Mr. Palmer told me to make an estimate as accurately as I could in the time given to me, and by all means keep it within the amount performed. Mr. Palmer, at a second interview, charged me the same thing again. I proceeded and made the estimate upon such returns as had previously been made by assistant engineers and my own knowledge of the condition of the road. Those returns and my own knowledge of the work at the time were not and could not well be sufficiently recent to enable an engineer to make an approximate estimate, the work being carried forward so fast at that time that very few days would suffice to materially change the amount of work performed.

I intended the estimate to be a little below the amount of work performed, and I think it really was so; subsequent examinations have confirmed me in this belief. The item in Exhibit "D," of excavations at the tunnel approaches, was erroneous, for this reason: A very heavy force of men was at work then at the time, and the amount forwarded me by the assistant engineer as done was so much larger than that about a month before that I was afraid to trust it in making an estimate under the instructions I had received from Mr. Palmer; subsequent careful examinations, however, have shown that the estimate was very much too small. I have since made a re-estimate of all the work done in this estimate of October 1, 1857, (marked "D,") or the work intended to have been included therein. The railroad company appointed Wm. R. Sill to make, with the assistance of myself, a re-estimate of all such work. We proceeded to make the remeasurements and estimates, with the aid of all the field notes and cross-sections connected with the work. We went over the line, remeasuring carefully all items of any considerable amount, and those

of lesser amount were tested and compared by the notes in the construction books. In some instances Mr. Sill was obliged to rely upon my statements as to where and how much the work was done on October 1st, 1857. These statements made to him were in every instance correct.

(The witness is now here shown by defendants counsel a paper marked "C," and proven 1st October, 1858, before Winfield Smith, master and commissioner.)

Witness continues: This paper "C" is the duplicate original return made by myself and Mr. Sill, and shows the result at which we arrived; it shows the amount of work done by Mr. Chamberlain up to October 1st, 1857, and the prices under the contract; in relation to the rock and extra haul an explanation should be made. The earliest approximate estimates, made from the profile of the road, justified the belief that the quantities would exceed the limit per mile named in the contract, and the contrary to this was not ascertained
533 until after the making up of the estimate, dated October 1st, 1857. Much work having been done by the chief contractor, Mr. Chamberlain himself, and which was not estimated monthly so carefully as was the work of his sub-contractor, will show the reason why precise knowledge was not had of this matter at the time. Had the quantities exceeded the limit, the contract price for the work then would be one dollar per yard. Upon full, final examination the quantities were found to be very little below the limit of the contract; therefore seventy-five cents per yard was the price to be allowed for the rock. The estimate for haul of October 1st, 1857, was also larger than it should have been; for while the quantities were believed to be above the limit of the contract it was the determination of the engineer to consider all excavations as being into embankment, and to deduct a like amount of embankment from the gross number of yards of work performed in accordance with the stipulation in the contract, and thereby avoid, as far as possible, excess of earthwork; for it was cheaper for the company to pay for its being hauled than to pay the price per yard for excess of earthwork.

Upon ascertaining that the quantities were really a little below the limit, I, as engineer, assumed that the contractor should be paid for nothing but what was actually hauled of five hundred feet; upon this basis the Woodward and Sill estimate is true and correct.

The item of grading, bridging, and masonry, proportionally done beyond New Lisbon, in the estimate dated October 1st, 1857, was very much too small; it was the intention to keep it pretty low, and this way of arriving at that item was very materially changed upon advice and mature deliberation.

In the approximate estimate of October 1st, this item was arrived at by comparing the work done between New Lisbon and La Crosse with work to be *done* between the *same* points. The estimate of Sill and Woodward comprises the work done between New Lisbon and La Crosse, and finds the proportion that bears to the work on the entire line included under the contract. This was, no doubt, the proper way of ascertaining the proportion of work done, for it at once establishes a *pro rata* value of the work performed. Some of the smaller items

of extra work, such as road and farm crossings, bridges, cattle passes, and changing highways, the excavations of foundations and timber in same, were such as no one could well understand the real value of, except in charge at the time of the construction. Mr. Sill had to rely, in a great measure, upon my assurances in relation to them. The estimates for these items I know to be not more than a fair value for the work; the item for "bank wall" is correct; I know this from my personal measurement.

The original contract between Mr. Chamberlain and the company contemplated a through cut at the dividing ridge. We, the
534 engineers, found that to make a tunnel would be much cheaper. Upon informing the company of this fact, Mr. Kilbourn proceeded with me to the dividing ridge, and it was then determined by him to build a tunnel; and being on his way to St. Paul's he wrote a letter to Mr. Goodrich, who, I believe, at that date was vice-president. The letter was carried to Mr. Goodrich by myself. It contained instructions from Mr. Kilbourn to Mr. Goodrich to get the executive committee together and change the contract accordingly; it had also recommendations what prices to pay—that is, about what he thought it ought to be done for. I have forgotten the precise prices, but recollect that when Mr. Kilbourn showed them to me I said to him that no one who had ever made a tunnel would take it for those figures. Upon the executive committee applying to Mr. Chamberlain I believe he refused to *to* the work at the price mentioned in Mr. Kilbourn's letter. I went before the executive committee; Goodrich, Kneeland, and Vliet were present—the latter during most if not all the time. They mentioned to me what Mr. Chamberlain offered to do the work for, and asked me what I thought of it? I told them there was risk about all that kind of work; that the tunnel price was low, considering all risks; that the approach price was high; I think, also, that I said if they could not get it any lower to let him do it at that price. While with the executive committee I heard Mr. Kneeland speak of *of* an original bid made by Mr. Chamberlain for tunnel work, should one be required, and said he did not believe that he could get Mr. Chamberlain to do it below that bid. The contract was let to Mr. Chamberlain immediately following this.

Taking the entire tunnel contract, I think it was at a good round price; it was doubtless something more than the work would really cost. I have seen contracts let at a higher price, and good many at a lower price. Tunnel contracts are very risky contracts. The change from through cut to a tunnel was a great saving to the company. It is my opinion that it would be a saving of hundreds of thousands of dollars.

At the time of making the estimate of October 1st there was an estimate also made for unfinished work east of New Lisbon. This was furnished the company in connection with the other estimate. Here is a copy of that estimate, which I now hold, marked "D."

*Cross-examined by Mr. Finch.*

I have known Mr. Chamberlain since 1851; I think I have never been in his employ at all; I have acted as engineer upon one road

where he had a contract. I have been as intimate with him so far as engineer and contractor on the same road, whose business brings them together. Since the commencement of this suit I have asked Mr. Chamberlain concerning it. I have not had frequent conversations
535 with him relative to the subject-matter of the suit; he mentioned to me that he wanted me as a witness; he first mentioned this soon after the commencement of this suit. I don't think he ever stated the facts or subject-matter which he expected to prove by me; no one in his behalf has ever talked with me except his counsel; I think Mr. Emmons called me three times in all, and gave me some points whereon he expected my testimony.

I met Mr Emmons but once before I made the affidavit filed in this case. I don't know that he specially directed my attention to facts, but inquired whether my estimates could be substantiated and explained by detailed explanations and notes. I don't remember that he called my attention to special points; I think he had my estimates before him at some of those conversations; I don't remember any particular items to which he called my attention. At our first interview I think he had no other than the estimate of 1st October, marked A. I don't recollect that Mr. Emmons called my attention to any items on that estimate, but I told him that changes would have to be made in it; this was a few days before my affidavit was made.

In March, 1858, Mr. Sill and I were appointed a remeasurement; it may have been in April.

Mr. Palmer gave me no reasons why that remeasurement should be particularly accurate; he told me to be sure and be within the amount, but gave me no reasons. I had at that time the profiles of the road in my possession as chief engineer. I have not seen the profiles for four or five months; when I last saw them, part of them were in the company's engineer's office at Milwaukee, and part of them Mr. Staughton had in his possession on the line; the consist of twelve or fifteen small rolls of thick drawing paper; they are not labelled, except in pencil from point to point where they reach. I drew part of them myself, and superintended the getting up of all of them; these profiles referred to are the profiles of the western division; I think I never saw the profiles of the road from Beaver Dam to Portage City. In making up the estimate signed by Sill and myself we used the original field note books, the cross-section notes, and our own through remeasurement notes of rock excavation, tunnel approach excavation, and comparison notes to test field notes; we made this estimate upon the strength of all these notes. We completed this estimate, I should think, about the 20th March, 1858. Mr. Staughton had the field notes and papers from which estimate was made in his possession. Mr. Palmer called on me three or four days before the first of October. On the first of October, 1857, about five or six miles of the road was wholly completed beyond Kilbourn City; we did not measure actually the distance, but knew it, without measuring, from the section stakes which were driven. It is about seventeen miles and a half
536 from Portage City to Kilbourn City. It is about twenty-five miles and a half from Kilbourn City to New Lisbon. We esti-

mated forty-three miles of main line. The track had not been laid more than five or six miles beyond Kilbourn City.

Portions of the land between Portage City and Kilbourn City were quite level, say about one half; the rest was more rolling, some of it pretty rough; there was some very heavy work between the two places; we had no cut over forty feet; they were short cuts; where the heavy cuts were the soil was clay; there was considerable haul at several points; I could not say how far it would average. We got at the estimate examination on the ground and used the profiles; we got at the amount of haul by looking and seeing; without the original notes of the excavations from whence the earth was taken, and some observation and knowledge of the way in which the work was performed, it would be very hard to make an accurate estimate of haul; by the original notes I mean the level notes of the line of location, division books, and cross-section notes.

Almost constant observation of the work as it was done is the basis from which I would make the estimate of the haul. If the field notes and the note books were not correct, the estimate for haul would not be accurate. I cannot from recollection state the points at which the haul occurred; my principal office was at Milwaukee.

I was out upon the line of the road nearly all the time. I was on the line between Kilbourn City and Portage City during the progress of the work; at work of any importance as often as once or twice a week, and sometimes stopped on a few miles of work for a whole week. There was much ballasting done between Portage City and Kilbourn City. There was not of material suitable for ballasting but a small portion of the distance along the line. The chief use of ballasting is on account of frost, to get good bed of the right kind of material. The character of the soil between these points was sandy—soil inclining to quick sand.

There was a good deal of grubbing between Portage City and New Lisbon, at different points; none of it was the heaviest grubbing. Most of it was done in the vicinity of Kilbourn City—the most of it. I have seen heavier grubbing than that was. I can only state the grubbing was heaviest on the eastern half of the road.

The grubbing on the whole line of the road might be called only middling.

The rock excavation was between Portage and New Lisbon; it was done in the summer and fall of 1857. The points *were* it occurred are particularly specified in a schedule accompanying my affidavit filed in this cause.

I, as chief engineer, superintended. The division engineers (two in number, Mr. Staughton and Mr. Howell) had a more imme-
537 diate charge of setting stakes and taking levels. The work was chiefly done under the immediate management of certain sub-contractors, most of whose names I do not now recollect. It was sandstone excavations. I make no distinction between sandstone and sandrock; a piece of loose rolling sandstone of great age is probably somewhat harder than its parent rock. It was pretty easy working this sandstone. I could not tell how much was averaged a day on the work. They could not take it out without blasting. It was a very

good easy rock to move. We had actual notes of each cut, and width, and height of the rock taken out. These notes were taken firstly by the division engineers; afterwards I measured each cut myself.

We take first the grade of the road at each hundred feet station; we take the cutting at the centre line on each of these stations. We take the side distances, the width of the work out from these centre stations, and the cuttings at the points so measured too; these are sufficient to make full calculations of the number of yards. I took these measurements myself. They were taken at various times, occupying on the whole, I should suppose, as much as two weeks of connected time. In making the estimates of Mr. Sill, we took such notes as would quickest test the accuracy of former notes; if any inaccuracy, however slight, was found, we would then make a thorough measurement of the cut, which actually amounted to a remeasurement of the whole work. We had the estimates and books of the sub-engineers who were there at the time.

The bank wall referred to by me was built near Kilbourn City, within the city. It was of sandstone. A bank wall, which contained 2,750 yards of the amount estimated, was built at the deep gorge near Kilbourn City, the bottom of it some few feet deep in the river; the embankment of clay was placed against it. The embankment was 90 feet high. After a rain it split in the middle. 20,000 yards of embankment, together with the bank wall, slid into the Wisconsin river.

I took measurements of the bank wall enough to know that the measurement was correct; I cannot remember its dimensions, but the amounts were ascertained, of course, by calculations from its length, breadth, and thickness; I saw two men measure its length and breadth before it was done.

*Filling at Fox Lake.*

I don't know who superintended the building of the pile bridge at Fox Lake. There is an item of twenty thousand dollars or upwards in the estimate, which is for building the pile bridge at Fox Lake, and filling in earth at the same place where the bridge sunk. There had never been any allowance for building the pile bridge. Much of the filling was done in the winter, and large quantities of stone were hauled, costing a greater than a usual price for hauling, and at
538 a meeting of the executive committee the matter was brought up. I stated then as near as possible the amount and character of the work; the committee decided to make the allowance named, and instructed me to enter it with the ballast estimate.

We never knew just how deep the *the* mud was; thirty-five feet piles were gone out of sight. It would be impossible to tell how many thousand yards were put into the sink hole; much of it was taken from points that could not be measured in the winter; many train loads of frozen earth were blasted and hauled in. I was up there perhaps twice a week. I made no general estimate of the filling in at Fox Lake. The item of $20,000 and a little upwards for extra work was allowed by the executive committee, under the circumstances, as I have before stated.

The length of the tunnel is little more than a quarter of a mile; the height is 19 feet, about. I could not tell how much was taken out of the tunnel. I left Mr. Staughton to close up the work.

I got at the estimate of the approaches by cross-sections, taken in the same manner as was mentioned in the case of rock. Mr. Staughton made the profile along there and the original surveys.

In making estimates I relied chiefly on field notes and cross-sections.

The extra work is chiefly the rock tunnel approaches and haul. Most of the papers, notes, &c., are in the railroad office, in Milwaukee, I believe.

Where I have stated in my direct examination as to circumstances of which I informed Mr. Sill in making our estimates, I relied upon our field notes and profiles and general knowledge of the work.

Nearly all of the field notes were taken by the assistant engineers.

Monthly estimates of the work done are usually returned by the assistant engineers to the chief engineer. Upon those returns the general monthly estimate is made.

I know that the work that purports to have been measured as work done before the first of October was done before that time, and no part of it has been performed since.

We had the line staked off into 100 feet distances, with a stake at the beginning and end of every cut. These are all numbered, and by their position we can, at any time, ascertain the position of any portion of the work.

*Re-examined by Mr. Emmons.*

In the item at Fox Lake pile bridge there is included and covered a former two-thirds estimate of piling alone of near $5,000, which, if charged to him in his account with the company, would make the $20,000 and upwards item correct.

Further this deponent saith not.

EZEKIEL W. WOODWARD.

539 EXHIBIT No. 30.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of the said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, BYRON KILBOURN, MOSES KNEELAND, JAMES LUDINGTON, D. C. FREEMAN, AND SELAH CHAMBERLAIN. } In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is there-

upon ordered, adjudged, and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled and made void, so that the same shall not hereafter be of any force or effect whatever. And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad or the rolling stock, personal property, or any of its appurtenances, or franchises, or anything connected therewith, under or by virtue of said article of agreement.

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And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or, in default thereof, an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or, in default thereof, an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or, in default thereof, an execution be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a master of this court to ascertain and report the annual income of the several lots described in the bill as having been conveyed to Moses Kneeland and James Ludington, from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same.

541

And that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedas shall be given and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

EXHIBIT No. 31.

State of Wisconsin, circuit court, Milwaukee county.

*Judgment docket.*

Names of persons against whom judgment is rendered: The La Crosse and Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Newcomb Cleveland.

Place of abode of judgment debtor: Milwaukee Co.

Damages and costs: $3,718 60.

Time of docketing judgment: Judgment docketed April 20, A. D. 1859, at 11 o'clock a. m.

Names of attorneys of the persons in whose favor judgment is rendered: Matt. H. Carpenter.

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript therefrom
542 and of the whole thereof, in a certain action wherein Newcomb Cleveland, plaintiff, and the La Crosse and Milwaukee Railroad Company, defendant.

Damages and costs, three thousand seven hundred and eighteen dollars and sixty cents $3,718 60.

In testimony whereof, I have hereunto set my hand and affixed the
[SEAL.] seal of said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk.*
By W. L. CLEAVER, *Dep.*

EXHIBIT No. 32.

State of Wisconsin, circuit court, Milwaukee county.

*Judgment docket.*

Names of persons against whom judgment is rendered: The La Crosse & Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Newcomb Cleveland.

Place of abode of judgment debtor: Milwaukee Co.

Damages and costs: $1,525 71.

Time of docketing judgment: Judgment docketed April 20, A. D. 1859, at 11 o'clock a. m.

Names of attorneys of the persons in whose favor judgment is rendered: Matt. H. Carpenter.

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

I, Wm H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript there-
543 from and of the whole thereof, in a certain action wherein Newcomb Cleveland, plaintiff, and the La Crosse & Milwaukee Railroad Company, defendant.

Damages and costs, fifteen hundred and twenty-five dollars and seventy-one cents—$1,525 71.

In testimony whereof, I have hereunto set my hand and affixed the
[SEAL.] seal of said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk.*
By W. L. CLEAVER, *Dep'y.*

EXHIBIT No. 33.

State of Wisconsin, circuit court, Milwaukee county.

*Judgment docket.*

Names of persons against whom judgment is rendered: The La Crosse & Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Sebre Howard.

Place of abode of judgment debtor: Milwaukee county.

Damages and costs: $25,586 78.

Time of docketing judgment: Judgment docketed May first, A. D. 1858, at 12 o'clock m.

Names of attorneys of the persons in whose favor judgment is rendered: Levi Hubbell.

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

I, Matthew Keenan, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript there-
544 from and of the whole thereof, in a certain action wherein Sebre Howard is plaintiff, and the La Crosse & Milwaukee Railroad Company is defendant.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Milwaukee, this eighth day of May, A. D. 1858.

MATTHEW KEENAN, *Clerk.*

EXHIBIT No. 34.

District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of November, A. D. 1859. Present, the honorable Andrew G. Miller, judge of said court, presiding.

JOHN H. LEWIS, *Marshal.*
JOHN M. MILLER, *Clerk.*

Among other the following proceedings were had, to wit:

SEBRE HOWARD
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

Be it remembered that heretofore, to wit, on the 28th day of October, A. D. 1859, came Sebre Howard, by his attorney, Mr. Hubbell, and filed his precepi for a summons against the La Crosse and Milwaukee Railroad Company, as follows:

U. S. DISTRICT COURT,
*Wisconsin District:*

SEBRE HOWARD
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

Please issue a writ of summons in the above entitled action,
545 in favor of the plaintiff and against the defendant in a plea of debt for fifteen thousand four hundred and sixteen dollars and 87 cents, which the said defendant unjustly withholds from the plaintiff to his damage twenty-five hundred dollars, and make said writ returnable on the first Monday in November, 1859. Dated Oct. 26, 1859.

Yours, &c.,

LEVI HUBBELL,
*Pl't'ffs' Att'y.*

To JOHN M. MILLER, Esq., *Clerk, &c.*

Whereupon a summons issued as follows:

THE UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

[SEAL] You are hereby commanded to summons the La Crosse and Milwaukee Railroad Company to appear before the district court of the United States of America for the district of Wis-

consin aforesaid, at Milwaukee, on the first Monday of November ensuing, then and there to answer unto Sebre Howard in a plea of debt. Debt fifteen thousand four hundred and eighteen dollars and eighty-seven cents, which the defendant unjustly withholds from the plaintiff, to his damage two thousand five hundred dollars, which shall then and there be made to appear, and of this writ make due return.

Witness, the honorable Andrew G. Miller, judge of the said district court of the United at the city of Milwaukee, in the said district of Wisconsin, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

LEVI HUBBELL, *Attorney.*
J. M. MILLER, *Clerk.*

And on or before the return day of said writ came the marshal, and returned said writ, with his return endorsed thereon, as follows:

"Served on the within named La Crosse and Milwaukee Railroad Company, by leaving a copy of this summons with Sanford R. Kane, secretary of said company, this 7th day of November, 1859.

"M. J. THOMAS, *Marshal.*
"By D. C. REED, *Deputy.*

"Fees, $2 32."

And afterwards, to wit, on the seventh day of November, A. D. 1859, came the said plaintiff, by his said attorney, and filed his declaration as follows:

United States district court, Wisconsin district.—January Term, 1859.

546 DISTRICT OF WISCONSIN, *ss:*

Sebre Howard, of Elgin, in the State of Ohio, and a citizen of the State of Ohio, plaintiff in this suit, by Levi Hubbell, his attorney, complains of the La Crosse and Milwaukee Railroad Company, a body corporate, duly incorporated and organized under and by virtue of an act of the legislature of the State of Wisconsin, approved April 2d, 1852, and acts amendatory thereof, defendant in this suit, in custody, &c., of a plea that it render to the said plaintiff the sum of fifteen thousand four hundred sixteen and $\frac{89}{100}$ dollars, ($15,416\frac{89}{100}$,) lawful money of the United States of America, which it owes to and unjustly detains from him. For that whereas the said plaintiff heretofore, to wit, on the first day of May, in the year one thousand eight hundred and fifty-eight, in the circuit court of the county of Milwaukee, in the second judicial circuit of the State of Wisconsin, before the judge thereof, by the consideration and judgment of said court, recovered against the said defendant the sum of twenty-five thousand five hundred eighty-six and $\frac{78}{100}$ dollars, part and parcel of which is above demanded, which in and by the said court was then and there adjudged to the said plaintiff against the said defendant for his damages which he had sustained, as well by reason of the non-performance by said defendant of certain promises and undertakings then lately made by said defendant as for his costs and charges by him about his suit in that behalf expended; which said judgment was then and there duly

entered and docketed, whereof the said company defendant was convicted, as by the record of said judgment remaining in the office of the clerk of said court in said county of Milwaukee (and a transcript whereof, duly and legally exemplified and authenticated, this plaintiff is ready to produce) will more fully appear, which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated, as to said sum of fifteen thousand four hundred sixteen and $\frac{89}{100}$ dollars, and that the said plaintiff hath not obtained any execution or satisfaction of or upon said judgment so recovered, as aforesaid, as to the said sum of fifteen thousand four hundred sixteen and $\frac{89}{100}$ dollars, part and parcel thereof; whereby an action hath accrued to said plaintiff to demand and have of and from the said defendant the said of money above demanded.

Nevertheless the said defendant (although often requested so to do) hath not as yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff of twenty-five hundred dollars, and therefore he brings his suit, &c.

LEVI HUBBELL,
*Att'y for the Plaintiff.*

547 And same day, to wit, on the seventh day of November, A. D. 1859, came the said plaintiff, by his said attorney, and entered on the order and rule book a rule on the defendant to plead, as follows:

SEBRE HOWARD
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY. } Of the first Monday of November, A. D. 1859.

On motion of Levi Hubbell, plaintiff's attorney, ordered, that the defendant plead to the plaintiff's declaration on file by the first Monday of December next, or its default will be entered.

LEVI HUBBELL,
*Plaintiff's Attorney.*

And afterwards, to wit, on the seventeenth day of November, A. D. 1859, came the said defendant, by its attorney, Mr. Carpenter, and filed its plea, as follows:

*Plea.*

District court of the United States for the district of Wisconsin.

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY
*ads.*
SEBRE HOWARD.

And the said La Crosse and Milwaukee Railroad Company, defendant in this suit, by Mat. H. Carpenter, attorney, comes and defends the wrong and injury when, &c., and says that there is not any record of the said supposed recovery in the said declaration mentioned remaining

in the circuit court for Milwaukee county, State of Wisconsin, before the judge thereof, in manner and form as the said plaintiff hath above in his said declaration alleged

And this the said defendant is ready to verify. Wherefore said defendant prays judgment if the said plaintiff ought to have and maintain the aforesaid action thereof against the said defendant.

MAT. H. CARPENTER, *Att'y Def't.*

And afterwards, to wit, on the twenty-fifth day of November, A. D. 1859, came the said plaintiff, by his said attorney, and filed his replication, as follows:

*Replication.*

United States district court, Wisconsin district.

SEBRE HOWARD
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

And the said plaintiff, as to the said plea of the said defendant by him above pleaded, says that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against
548 him, the said defendant, because he says that there is such a record of such a recovery of judgment remaining in the said circuit court of the county of Milwaukee, and State of Wisconsin, before the judge thereof, as he, the said plaintiff, hath above in his said declaration in that behalf alleged. And this he, the said plaintiff, prays may be inquired of by the country. And the said defendant likewise, &c.

LEVI HUBBELL,
*Pl't'ff's Att'y.*

And afterwards, to wit, on the ninth day of said term, to wit, on the twenty-eighth day of November, A. D. 1859, the following proceedings were had, to wit:

*Trial.*

SEBRE HOWARD
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY. } At law.

This day the issue herein came on to be tried by the court, and was submitted by the counsel. Whereupon the court doth now, upon inspection of the record, find that there is such a record in manner and form as the plaintiff hath herein declared on.

*Judgment.*

And it is considered and adjudged by this court now here, that the plaintiff do have and recover of the defendant, the La Crosse and Milwaukee Railroad Company, sixteen thousand three hundred and fifty-eight dollars and four cents, debt and damages, together with twenty-one dollars and eighty-two cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll signed November 28th, A. D. 1859.

J. M. MILLER, *Clerk.*

| | |
|---|---|
| Debt and damages | $16,358 04 |
| Costs | 21 82 |
| | 16,379 86 |

Judgment roll filed Nov. 28th, 1859, at five o'clock p. m.

J. M. MILLER, *Clerk.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the said United States the eighty-fourth.

[SEAL.]

J. M. MILLER, *Clerk.*

549 EXHIBIT No. 35.

State of Wisconsin, circuit court, Milwaukee county.

*Judgment docket.*

Names of persons against whom judgment is rendered: The La Crosse & Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Lawrence G. Graham & Donald D. Scott.

Place of abode of judgment debtor: Milwaukee county.

Damages and costs: $11,188 15.

Time of docketing judgment: Judgment docketed September 21, A. D. 1858, at 10 o'clock a. m.

Names of attorneys of the persons in whose favor judgment is rendered: Palmer & Stark.

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Lawrence G. Graham & Donald D. Scott, plaintiffs, and the La Crosse & Milwaukee Railroad Company, defendant.

Damages and costs, eleven thousand one hundred and eighty-eight dollars and fifteen cents—$11,188 15.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk.*
By W. L. CLEAVER, *Dep'y.*

550 EXHIBIT No. 36.

State of Wisconsin, circuit court, Milwaukee county.

*Judgment docket.*

Names of persons against whom judgment is rendered: La Crosse and Milwaukee Railroad Company.

Names of persons in whose favor judgment is rendered: Lawrence G. Graham and Donald D. Scott.

Place of abode of judgment debtor: Milwaukee county.

Damages and costs: $29,820 71.

Time of docketing judgment: Judgment docketed Nov. 25th, 1858, at 12 o'clock m.

Names of attorneys of the persons in whose favor judgment is rendered: Palmer and Stark.

STATE OF WISCONSIN,
*Circuit Court, Milwaukee County, ss:*

I, Wm. H. Jacobs, clerk of said court, do hereby certify that I have compared the foregoing with the original "docket," now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Lawrence G. Graham and Donald D. Scott, plaintiffs, and La Crosse and Milwaukee Railroad Company, defendant.

Damages and costs, twenty-nine thousand eight hundred and twenty dollars and seventy-one cents, $29,820 71.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] the seal of said court, at Milwaukee, this 17th day of September, A. D. 1861.

WM. H. JACOBS, *Clerk.*
By W. L. CLEAVER, *Deputy.*

551 EXHIBIT No. 37.

District court of the United States of America for the district of Wisconsin.

| | |
|---|---|
| LAWRENCE G. GRAHAM AND DONALD D. SCOTT *vs.* LA CROSSE & MILWAUKEE RAILROAD COMPANY. | Judgment rendered for the plaintiff for the sum of $44,392 32, costs taxed at 20 86. Judgment docketed Jan. 11th, 1860, at five o'clock p. m. Carpenter and Gridley, plaintiffs' attorneys. |

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the foregoing with the original "docket" now of record in my office, and that it is a correct transcript therefrom and of the whole thereof, in a certain action wherein Lawrence G. Graham and Donald D. Scott are plaintiffs, and La Crosse & Milwaukee Railroad Company is defendant.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this seventeenth day of September, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the said United States the eighty-sixth.

[SEAL]

J. M. MILLER, *Clerk.*

552 EXHIBIT No. 38.

(Copy.)

ENGINEER'S OFFICE, LA CROSSE & MILWAUKEE R. R.,
*June 1st*, 1857.

Estimate of labor performed and materials furnished in the construction of the western division of the La Crosse and Milwaukee railroad by Selah Chamberlain up to date:

| | |
|---|---|
| Grading and masonry, 21¾ miles, *a* $10,000 | 217,500 00 |
| Cross-ties delivered, 15 miles, *a* 800 | 12,000 00 |
| Extra haul, earth | 10,200 00 |
| Grubbing and clearing, 50 miles, *a* $300 | 15,000 00 |
| Solid rock excavated, 16,700 yds., *a* $1 00 | 16,700 00 |
| Roadway and cattle pass | 2,525 00 |
| Exca. of foundations | 1,150 00 |
| Bank wall, 400 yds., $3 00 | 1,200 00 |
| Chairs and spikes, 45 miles, *a* $6 00 | 2,700 00 |
| Tunnel approaches exca., 400 yds., *a* $2 00 | 800 00 |
| Total | 304,075 00 |

| | |
|---|---|
| Brought forward | 304,075 00 |
| Deduct previous estimate | 175,775 00 |
| | $128,300 00 |
| Less 10 p'r | 12,830 00 |
| Am't due | $115,470 00 |

I hereby certify that the above estimate is correct.

E. W. WOODWARD,
*Chief Engineer.*

(Copy.)

CHIEF ENGINEER'S OFFICE, LA CROSSE & MIL. R. R.,
*Milwaukee, July 1st*, 1857.

Estimate of labor performed and materials furnished in the construction of the western division of the La Crosse and Milwaukee railroad, by Selah Chamberlain, contractor, during the month of June, 1857, in addition to what had previously been done:

| | |
|---|---|
| Grading and masonry, 7½ miles, *a* $10,000 | 75,000 00 |
| Cross-ties delivered, 15 miles, *a* $800 | 12,000 00 |
| Extra haul of earth | 9,200 00 |
| Grubbing and clearing, 20 miles, *a* $300 | 6,000 00 |
| Solid rock exc., 24,500 yds., *a* $1 00 | 24,500 00 |
| Roadway and cattle pass, masonry for same | 3,425 00 |
| Exc. of foundation and timber | 2,650 00 |
| Bank wall, 1,500 yds., *a* $3 00 | 4,500 00 |
| Tunnel approach exc., 12,000 yds., *a* $2 00 | 24,000 00 |
| 553 Timber and work in piling | 1,100 00 |
| Total est. | 162,375 00 |
| Less 10 pr | 16,237 50 |
| | $146,137 50 |

I hereby certify that the above estimate is correct.

E. W. WOODWARD,
*Chief Engineer.*

(Copy.)

CHIEF ENGINEER'S OFFICE, LA CROSSE & MILWAUKEE R. R ,
*Milwaukee, August 1st*, 1857.

Estimate of labor performed and materials furnished in the construction of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, by Selah Chamberlain, contractor, during the month of July, 1857, in addition to what had formerly been done:

| | |
|---|---|
| Grading and masonry, 5½ miles, *a* $10,000 | 55,000 00 |
| Extra haul of earth | 13,500 00 |
| Solid rock excavation, 18,000 yds., *a* $1 00 | 18,000 00 |

| | |
|---|---|
| Roadway, cattle pass, and masonry for same..... | 2,500 00 |
| Excavation of foundation, and timber for same ..... | 1,200 00 |
| Bank wall, 500 yds., *a* $3 00..... ..... | 1,500 00 |
| Tunnel approach, 18,000 yds., *a* $2 00..... | 36,000 00 |
| Kilbourn City tunnel culvert. ..... | 800 00 |
| Track-laying, 12 miles, *a* $400..... | 4,800 00 |
| | $133,300 00 |
| Deduct 10 p'r. .. ..... | 13,300 00 |
| | $119,970 00 |

I hereby certify that the above estimate is correct.

E. W. WOODWARD, *Chief Eng'r.*

(Copy.)

ENGINEER'S OFFICE, LA CROSSE & MILWAUKEE R. R.,
*Milwaukee, Sept.* 1*st*, 1857.

Estimate of labor performed and materials furnished in the construction of the La Crosse and Milwaukee railroad, between Portage City and La Crosse, by Selah Chamberlain, contractor, during the month of August, 1857, in addition to what had been previously done:

| | | |
|---|---|---|
| Grading and masonry, 7¼ miles, $10,000..... | | 72,500 00 |
| Extra work hauling earth..... | | 6,500 00 |
| Solid rock excavation, 18,000 y'ds, $1..... | | 18,000 00 |
| Bank wall, 500 y'ds, $3 00..... | | 1,500 00 |
| | Tunnel approach, 15,400 y'ds, $2..... | 30,800 00 |
| 554 | Kilbourn City tunnel..... ..... | 400 00 |
| | Track-laying, 5 miles, $400..... | 2,000 00 |
| | | $131,700 00 |
| Deduct 10 p..... | | 13,170 00 |
| | | $118,530 00 |

I hereby certify that the above estimate is correct.

E. W. WOODWARD,
*Ch'f Engineer.*

EXHIBIT No. 39.

Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held June 3, 1857. Present: E. H. Goodrich, M. Kneeland, G. Vliet, B. Kilbourn, pres't.

The following estimates were allowed and ordered paid:

| | |
|---|---|
| S. Chamberlain, western division..... ..... | 115,470 00 |
| eastern division..... | 12,719 60 |

(Signed) E. P. WHALING, *Sec'y pro tem.*

Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held July 7, 1857. Present: Messrs. S. Brown, G. Vliet, E. H. Goodrich, vice-pres't.

The following estimates presented and allowed, and ordered paid, as per contract:

| | |
|---|---|
| S. Chamberlain, eastern division, ballasting..... | 19,800 00 |
| S. Chamberlain, western division..... | 146,137 50 |

(Signed) E. P. WHALING, *Sec'y pro tem.*

555 Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held Aug't 8, 1857. Present: Messrs. S. Brown, G. Vliet, E. H. Goodrich, vice-pres't.

The following estimate presented and allowed—paid S. Chamberlain, 119,970 00.

(Signed) E. P. WHALING, *Sec'y pro tem.*

Meeting of the executive committee of the La Crosse and Milwaukee Railroad Co., held Sept. 9, 1857. Present: Messrs. S. Brown, G. Vliet, E. H. Goodrich, vice-pres't.

The following estimates presented and allowed:

| | |
|---|---|
| S. Chamberlain, eastern division, for ballasting..... | 20,804 40 |
| S. Chamberlain, northwestern div., for ballasting..... | 14,300 00 |
| " construction..... | 118,530 00 |

Mr. Palmer presented the following resolution, which was adopted unanimously:

*Resolved*, That the president and secretary execute and deliver to Selah Chamberlain a warrant of attorney and such other papers as may be necessary to perfect a judgment in his favor against the La Crosse and Milwaukee Railroad Company for $629,089 72, being the amount due him at this date as contractor.

OCTOBER 1*st*, 1857.

(Signed) J. A. HADLEY, *Sec'y.*
H. L. PALMER.
G. VLIET.
And BYRON KILBOURN, *Pres't.*

Present: S. Brown, J. A. Helfenstein, J. Hadley, Chas. E. Jenkins. Absent: Messrs. Goodrich, Hopkins, Strong, and Wheeler.

556 October 9, 1861. Receiver's report for month of September, 1861, filed. And afterwards, to wit, on the 31st day of October, A. D. 1861, came the defendant, Selah Chamberlain, by his solicitors, and filed exceptions to the masters' report, as follows:

*Chamberlain's exceptions to masters' rep't.*

District court of the United States for the district of Wisconsin—In equity.

GREENE C. BRONSON AND JAMES T. SOUTTER, *trustees*,
*versus*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN, AND OTHERS, *defendants*.

Exceptions taken to the report of Winfield Smith, a master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, bearing date the 1st day of September, A. D. 1861, and filed on the 7th day of October, A. D. 1861, on the part of the defendant, Selah Chamberlain.

*Fi t exception.*

"For that the said masters have not certified and allowed in their report the whole amount of the balance of account due to the defendant, Chamberlain, from the La Crosse and Milwaukee Railroad Company, as produced and proven before the said masters, on the part of the said Chamberlain.

The items of said Chamberlain's account against said company, together with all sums of money received by him as partial payments or set-offs thereto, are stated in the paper annexed to the report of said masters, and marked "schedule third."

The evidence proving such accounts (exclusive of the times or periods when rests should be made, or the proper dates when the application of payments or set-offs should be made) is as follows:

Record of judgment in Chamberlain's favor, Oct. 2d, 1857. Testimony accompanying masters' report, page 24.

Lease or mortgage to Chamberlain, and the contemporaneous agreement of Sept. 26, 1857. Testimony, page 79.

Also testimony submitted by defendant, Chamberlain, and received at the hearing.

Depositions referring to pages of testimony returned by, and referred to in, masters' report, as follows: Edgar C. Jennings, p. 7 to 21; Dwight W. Keyes, p. 21 to 42; Daniel L. Wells, p. 42 to 45; Royal D. Jennings, p. 45 to 47; Jno. M. Kimball, p. 49 to 50; William R. Sill, p. 50 to 53.

557

Proofs and exhibits relating to money paid Hoover, page 53, and exhibit returned, marked No. 7:

Dwight W. Keyes, p. 53 to 54;
A. G. Miller, jr., p. 54 to 57;
Edwin H. Goodrich, p. 57 to 67;
Selah Chamberlain, p. 67 to 79;
Selah Chamberlain, p. 83 to 91;
Selah Chamberlain, p. 95 to 105.

Proofs and exhibits referred to on page 79 as schedules A, B, C, and D, and on page 80 as F.

Exhibits referred to on page 82, marked No. 8 and 9.

The following depositions and exhibits thereto annexed, referred to on pages 82 and 83, and returned and marked Exhibit No. 29:

Charles S. Gregg, Thomas Daniel, Don J. Whittemore, Isaac C. Brewer, John McLean Stoughton, William R. Sill, Moses Kneeland, Ezekiel W. Woodward.

Dwight W. Keyes, page 92 to 93;
Henry L. Palmer, page 106 to 116;
Dwight W. Keyes, page 116 to 123;
E. H. Goodrich, page 123 to 124;
Daniel L. Wells, page 126 to 130;
Selah Chamberlain, page 3 c. to 41 c.;
Selah Chamberlain, page 49 c. to 51 c.

Proofs referred to on pages 124 and 125, and Exhibits No. 38 and 39.

*Second exception.*

For that the said masters have, in stating and certifying the account of said Chamberlain against the said La Crosse and Milwaukee Railroad Company, inquired into the consideration of the judgment rendered in this honorable court on the law side thereof, on the second day of October, A. D. 1857, in favor of said Chamberlain, and against said railroad company; whereas said judgment was and is conclusive as between said Chamberlain and the said railroad company, and as against all parties to this suit.

See page 10 of the masters' report, and the "separate statement" there referred to as part of schedule fourth.

*Third exception.*

For that the said masters have certified in their report that the real amount which was due to said defendant Chamberlain, on the
558 second day of October, A. D. 1857, on the items of indebtedness included in and which formed the consideration thereof, was the sum of $568,975 77; whereas they should have certified in such report that the real amount due to the said Chamberlain from said railroad company at the date of said judgment, and upon the items of indebtedness intended to be included therein, was the sum of $653,303 57, (see page 10 of the masters' report where they so certify, "and the separate statement" there referred to as part of schedule 4th,) and that the real amount of the indebtedness intended to be included in said judgment was the sum of $653,303 67. See Selah Chamberlain's testimony reported by said masters, and returned as part of their report, pages 67 to 79, 83 to 91, 95 to 105, 3 c. to 41 c., and 49 c. to 51 c.

H. L. Palmer's, p. 106 to 116.

Depositions of Charles S. Gregg, Thomas Daniel, Don J. Whittemore, Issac C. Brewer, John McLean Stoughton, William R. Sill, Moses Kneeland, and Ezekiel W. Woodward, referred to by masters in testimony by them returned on pages 82 and 83, as contained in Exhibit No. 29, accompanying report.

*Fourth exception.*

For that the said masters have in such report certified and allowed as due to the defendant Chamberlain, on the said second day of October, 1857, and as forming part of the consideration of said judgment, for "tunnel approach excavation," 24,653 cubic yards, at $2 00 per yard, amounting to the sum of $49,306 00; whereas they should have certified and allowed 739,573 at $2 00 per cubic yard, amounting to the sum of $147,914 60.

See the 12th item contained in the "separate statement"

Report as part of schedule fourth.

And that they ought to have certified and allowed 739,573 at $2 00 per cubic yard, amounting to the sum of $147,914 60. See all of the testimony, proofs, and exhibits referred to in the third exception.

*Fifth exception.*

For that the said masters have in such report certified and allowed to the said Chamberlain interest on his said account at the rate of seven per centum per annum; whereas the said masters should have certified and allowed interest at the rate of twelve per centum per annum thereon.

See the lease or mortgage to Chamberlain, and the contemporaneous agreement of 26th September, 1857, referred to by masters on the 79th page of testimony returned.

*Sixth exception.*

For that the said masters have in such report certified and allowed to the said Chamberlain upon his claim for money paid by him on or before October 1st, 1858, in the construction of depot buildings at La Crosse, interest at the rate of seven per cent. per annum; whereas they should have certified and allowed interest at the rate of twelve per cent. per annum.

559

See lease from Spencer & Reynolds to Chamberlain, dated 29th July, 1858, and referred to as filed in the cause by the masters on page 50 of the testimony returned.

Also page 11 of the masters' report, where they report this item of Chamberlain's "special claims."

*Seventh exception.*

For that the said masters have in such report allowed and certified to the said Chamberlain upon his claim for moneys paid by him to Jacob A. Hoover for a lot of land in the city of Milwaukee, crossed by the said railroad and used for its purposes, interest at the rate of seven per cent. per annum.

Whereas they should have allowed and certified thereon interest at the rate of ten per cent. per annum.

See proofs and exhibits relating to money paid Hoover, page 53 of testimony, and exhibit returned marked No. 7.

*Eighth exception.*

For that the said masters have not in such report allowed and certified in favor of and to the said Chamberlain any part of an item in his account produced and proven before said masters of two hundred thousand dollars, liquidated damages and interest thereon, at the rate of twelve per centum per annum, and which item and claim for damages is fully mentioned and specified in the agreement, reported by said masters as proven before them, between the said Chamberlain and said railroad company, bearing date the 26th day of September, A. D. 1857.

See agreement contemporaneous with lease or mortgage, referred to on page 79 of testimony. Copy as proven in testimony filed and used by Chamberlain at the hearing.

See also Selah Chamberlain's testimony on pages of testimony 87 to 91.

*Ninth exception.*

For that the said masters have not in such report allowed and certified in favor of and to the said Chamberlain the item in his account produced and proven before said masters of "loss on the steamer Keokuk," with interest thereon.

See Chamberlain's account, schedule third. Account as allowed by masters' schedule fourth.

See also Chamberlain's deposition. Also deposition of E. H. Goodrich, pages 60 to 67.

560 *Tenth exception.*

For that the said masters have in such report stated and certified as the principal sum payable upon the mortgage bonds mentioned in the bill of complaint in this cause, being one thousand bonds of one thousand dollars each, at fifty cents on a dollar, amounting to the sum of $500,000; whereas the said masters should have stated and allowed and certified in such report the said mortgage bonds at the principal sum of $1,000,000.

*Eleventh exception.*

For that the said masters have in such report certified and stated that in ascertaining the facts and amounts, and in making the computations in such report contained and referred to, they had been guided by the opinions and instructions of the court communicated to them in connection with the order of reference in said cause.

EMMONS, VAN DYKE & HAMILTON,
*Solicitors and of counsel for the defendant Selah Chamberlain.*

And afterwards, to wit, on the 2d day of November, A. D. 1861, came the complainants by their solicitor, and filed exceptions to the masters' report, as follows:

*Exceptions of Complainant to Masters' report.*

District court of the United States.

GREENE C. BRONSON and JAMES T. SOUTTER, Trustees,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

Exceptions taken by the said complainants to the report of Winfield Smith, Jerome R. Brigham, and Increase A. Lapham, to whom this case was referred in pursuance of an order made on the 11th day of March, A. D. 1861, and a supplemental order made on the 21st March, 1861.

*First exception.*

For that the said masters have, in and by their said report, for the purpose of computing interest due on the mortgage of the complainants, considered the principal sum secured by the mortgage of the complainants to be $500,000; whereas the said masters ought to have considered the said principal sum what the same actually is and as it is described in the said mortgage, to wit, the sum of $1,000,000.

Refer to page 3 of masters' report.

*Second exception.*

561 For that the said masters report the entire interest which has fallen due since the first day of March, A. D. 1859, to be the sum of $100,000, whereas the said masters should have reported the same to be the sum of $200,000.

Refer to pages 3 and 4 of masters' report.

*Third exception.*

For that the said masters, in the schedule numbered one, attached to their report, neglect to credit the sum of $38,513 26 paid by the said trustees for interest on the first mortgage on the said road, whereas the said masters should have credited the same in the statement of accounts to the said trustees.

*Fourth exception.*

For that the said masters, in the said schedule numbered 1, have neglected to credit to the said trustees the sum of $573 74, paid for the steamer Keokuk, whereas the said masters should have credited the same.

Refer to testimony of P. Dow, being on pages 25 and 36 of testimoney as reported by masters.

*Fifth exception.*

For that the said masters, in the said schedule, have neglected to credit to the said trustees the sum of $13,386 14 for expenses under the trust deed in this foreclosure suit, whereas the said masters should have credited the same.

Refer to Exhibit No. 22, and to pages 24 and 25 of testimony.

*Sixth exception.*

For that the said masters, in the said schedule, have credited the said trustees on account of interest on the said mortgage set forth in the complaint, from March 1, 1859, to March 1, 1860, with the sum of $40,000, whereas the said masters should have credited for such interest the sum of $80,000, instead of the sum of $40,000.

Refer to Schedule 1, attached to masters' report.

*Seventh exception.*

For that the said masters, in the said schedule, have charged the said trustees for a balance in their hands on the 9th June, 1860, of $33,253 21 and interest thereon, amounting to $598 56, whereas there was no balance in the hands of the trustees, and the said masters should have inserted no such item.

Refer to Schedule 1, attached to masters' report.

*Eighth exception.*

For that the said masters, in the said schedule, have charged the complainants with interest on monies in their hands, that is to say, under the date of September 1st, 1860, with the sum of $598 56, and under date of March, 1861, with the sum of $554 07, whereas
562 the complainants are not chargeable with interest, and those items should have been omitted.

Refer to Schedule 1, attached to masters' report.

*Ninth exception*

For that the said masters, in the said schedule, have credited the said trustees on account of interest on the said mortgage from March 1, 1860, to September 1, 1860, only $20,000, and from September 1, 1860, to March 1, 1861, only $20,000, and March 1, 1861, to September 1, 1861, only $20,000, whereas the said masters should have credited $40,000 to Sept. 1, 1860, $40,000 to March 1, 1861, and $40,000 to September 1st, 1861.

Refer to Schedule 1, attached to masters' report.

*Tenth exception.*

For that the said masters, in and by the said schedule, and by their said report, certify that the interest due to the complainants on the

first day of September, 1861, was $25,594 16, whereas the said masters should have certified that the interest due at that date was $200,000.

Refer to Schedule 1, attached to masters' report.

*Eleventh exception.*

For that the said masters, in their said report, certify that the amount received by the complainants through Prentiss Dow, their agent, of net revenues of the road and property covered by the mortgage is the sum of 74,405 84, whereas they should have certified that the nett amount was $21,052 87.

Refer to Schedule 1, attached to masters' report, and to Exhibit 27.

*Twelfth exception.*

For that the said masters, in their said report, have mingled the accounts of the trustees with Selah Chamberlain, and their accounts with the La Crosse and Milwaukee Railroad Company, whereas they should have only ascertained and reported the accounts of the trustees, while they, the trustees, were in possession of the mortgaged property.

Refer to masters' report and Schedule 1.

*Thirteenth exception.*

For that the said masters, in their said report, have reported the amount due upon a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company on the 7th day of October, 1857, for $111,727 71, whereas the said masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts, except only so far as necessary to ascertain the amount due upon the mortgage set forth in the complaint.

Refer to report, page 4.

*Fourteenth exception.*

563 For that the said masters, in their said report, have reported the amount due upon a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company in the circuit court for Milwaukee county, on the 20th April, 1859, whereas the said masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts except only so far as necessary to ascertain the amount due upon the mortgage set forth in the complaint.

Refer to report, page 5.

*Fifteenth exception.*

For that the said masters, in their said report, have reported the amount due upon a certain other judgment in favor of Newcomb

Cleveland against the said railroad company in the said circuit court of Milwaukee county, on the 20th day of April, 1859, whereas the said masters should have confined their inquiries to the issue raised by the pleadings, and should have omitted all accounts except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 6.

*Sixteenth exception.*

For that the said masters, in their said report, have reported the amount due on certain judgments in favor of the defendant Sebre Howard, whereas the said masters should have confined their inquiries to the issue raised by the pleadings, and should have omitted all accounts except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 6.

*Seventeenth exception.*

For that the said masters, in their said report, have reported the amount due on certain judgments of the defendants Graham and Scott, whereas the said masters should have confined their inquiries to the issue raised by the pleadings, and should have omitted all accounts except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

Refer to report, page 6.

*Eighteenth exception.*

For that the said masters, in the said report, have ascertained the amount of the several specific claims of the defendant Selah Chamberlain, to all of which the complainants except, for that the masters should have confined their inquiries to the issues raised by the pleadings, and should have omitted all accounts except only so far as necessary to ascertain the amount due on the mortgage set forth in the complaint.

564 Refer to report, page 8.

*Nineteenth exception.*

For that the said masters, in their said report, have certified that of the rolling stock forty box cars, amounting at the cost price thereof to thirty-one thousand dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, are covered and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepard Knapp and no other, whereas the said masters should have certified that the said rolling stock was covered by and included in the mortgage of the complainants in this action.

Refer to pages 12 and 13 of report.

THOMAS L. OGDEN,
*Sol. for Compl't.*

And same day (Nov. 2, 1861) came the defendants Lawrence G. Graham and Donald D. Scott, Newcomb Cleveland, Sebre Howard, and John S. Rockwell, by their solicitors, and filed exceptions to the masters' report as follows:

*Exception of L. G. Graham et als. to masters' report.*

In District court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON AND JAMES T. SOUTTER, Compl'ts,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

Lawrence G. Graham and Donald D. Scott, Newcomb Cleveland, Sebre Howard, and John S. Rockwell, defendants to the bill of complaint of Greene C. Bronson and James T. Soutter, complainants, come here into court and make and file their exceptions to the report of Winfield Smith, Jerome R. Brigham and I. S. Lapham, masters, to whom this cause was referred by an order of the said court made on the 11th day of March, A. D. 1861, and which report of said masters was filed the 7th day of October, A. D. 1861, as follows, that is to say:

*First exception.*

For that the said masters refused to give these defendants reasonable time to put in evidence as to the claim of Selah Chamberlain, one of said defendants, these defendants offering to give evidence of engineers as to the amount of work done and things furnished by said Chamberlain constituting the claim made by said Chamberlain against
565 the La Crosse & Milwaukee Railroad Company, and which evidence would show that said Chamberlain's claim is unjust and unfounded.

*Second exception.*

The masters were required by the order of the court and the opinion of the court, furnished to them for their guidance, to state an account between Selah Chamberlain and the La Crosse & Milwaukee Railroad Company, and in doing so, first, to ascertain the real amount of said company's indebtedness to him, said Chamberlain, that is, all the indebtedness of the company to him of every sort and kind, and then,

Second, to ascertain the amount of *such indebtedness* that was included in his said judgment against the said company, and report the amount of said Chamberlain's several specific claims, and this would, of course, show how much of the indebtedness to Chamberlain was and how much of it was not a judgment lien upon the property of the company covered by the mortgage in foreclosure in this cause.

Whereas the said masters have, in stating said account, not at all observed this duty nor at all separated the amounts now due to said

Chamberlain upon the judgment from the amount due Chamberlain on items not included in the judgment, but, on the contrary, have blended the judgment with other items, which are not a lien upon the road, in one account, and have arrived at a balance due Chamberlain on the account, including the amount that is and the amount that is not a judgment lien upon said property.

See the report, pages 9, 10.

See also Schedule *third*, returned with and as part of said report.

*Third exception.*

The judgment of Chamberlain against the La Crosse & Milwaukee Railroad Company was attacked in the answer of this defendant as fraudulent, and as having been confessed for too much. The evidence introduced by this defendant before the masters shows that Chamberlain's judgment was confessed by said La Crosse & Milwaukee Railroad Company with the intent to hinder, delay and defraud its creditors, and that said Chamberlain, when said judgment was confessed, well knew of such intent, and accepted said confession of judgment, and caused the same to be entered up and docketed, for the purpose of aiding said company in accomplishing its said unlawful designs.

See testimony produced by these defendants and other defendants before the masters, admitted by stipulation in writing, and marked by said masters Exhibit No. 24.

See also, particularly, the testimony of Byron Kilbourn, be-
566 ginning on page of said Exhibit marked page 143.

And the said masters ought to have reported that fact to said court, and ought to have reported that the said judgment was, as to all the creditors of said La Crosse & Milwaukee Railroad Company, absolutely null and void and no lien or incumbrance upon the property covered by the mortgage, being foreclosed in this cause; and that the said Chamberlain was entitled to nothing out of the surplus which may arise on the sale of the said property under a decree in this cause until after all other creditors of said company shall be fully paid.

*Fourth exception.*

The judgment of the said Chamberlain against the said La Crosse & Milwaukee Railroad Company was attacked in the answer of these defendants, on the ground that it was confessed with the design and intent to thereby hinder, delay, and defraud the creditors of said La Crosse & Milwaukee Railroad Company, and for too much.

The testimony before the masters, see Exhibits
shows that Chamberlain, in his own accounts, and in the report of Woodward, chief engineer, upon which said judgment was confessed, claimed and was allowed in said judgment this item, viz:

"Grading and masonry, equal to 9½ miles.....$96,000 dollars."

The masters in their said report, in stating the amount of real "indebtedness from said company to said Chamberlain, included in

said judgment" for the above item and for the things embraced in the above item, allow an item as follows, viz:

"Grading, bridging, and masonry, proportionably equal in value.....$168,275 dollars,"

thus reporting to this court, as included in said judgment, $72,275 dollars, for a specific amount of work that was not included in said judgment when it was confessed, and which is not therefore a judgment lien on the property covered by the mortgage being foreclosed in this cause.

The masters should have stated this last named amount, if the found it due from said company to Chamberlain, among the items of indebtedness not included in said judgment.

*Fifth exception.*

In the account presented by said Chamberlain before the masters he charges against the company an item as follows:

"Completing road to New Lisbon.....$56,500 dollars,"

and this amount was all that said Chamberlain, in said account, claimed for this work.

Whereas the said masters, in the account stated by them,
567 allow this item as follows:

"Completing track laying, ballasting, and grading on line from Portage City to New Lisbon, 62,000 dollars, thus allowing said Chamberlain for this item $5,500 dollars more than the said Chamberlain himself claimed; which, with the monthly rests and compounding of interest on said $5,500 dollars, makes a total amount charged to the company in this item of $7,152 dollars and 90 cents.

*Sixth exception.*

For that said masters have, in the accounted stated by them between said Chamberlain and said company, compounded the interest every month by making monthly rests and adding the interest for each month into the balance, upon which interest is computed for the next month, (see Schedule third, filed with the report,) so that the said masters allow said Chamberlain 16,646 dollars and 86 cents compound interest, as is shown by the following statement of said account stated by said masters, except that the interest, by being kept in separate column, is not compounded monthly, as it is in the account stated by the masters. The said account, conceding its items of debt and credit to be correct, which, however, is denied, should have been stated as follows:

*The La Crosse and Milwaukee Railroad in account and interest, at seven per cent., to September 1, 1861, with S. Chamberlain.*

| Dr. | | | | Cr. | | |
|---|---|---|---|---|---|---|
| 1857. | | | | 1857. | | |
| Oct. 2 | To real amount due on items included in judgment | | $568,975 77 | Oct'r 31 | By nett earnings for October | $30,570 29 |
| | Grading depot grounds at Kilbourn city | | 973 20 | | Interest one month. | |
| | Damages for detention and change of line at Lisbon | | 1,121 00 | | Balance | 548,619 11 |
| | Draft on Bank of the Republic, Sept. 4th, 1857, included in settlement, but not paid | | 5,000 00 | | | |
| | Getting engines, cars, and iron over Wisconsin river | | 3,119 43 | | | |
| | | | $579,189 40 | | | $579,189 40 |
| 31 | Interest from Oct. 2d to date | $3,265 98 | | | | |
| Nov'r 1 | To balance brought forward | | 548,619 11 | Nov. 30 | By nett earnings for November | 24,698 25 |
| | | | | | Balance | 523,920 86 |
| | | | | | | 548,619 11 |
| 30 | Interest to date | 3,200 27 | | | Interest one month. | |
| Dec. 1 | To balance brought forward | | 523,920 86 | Dec'r 31 | By net earnings for December | 15,153 31 |
| | Completing track laying, ballasting, and grading, on line from Portage City to New Lisbon | | 62,000 00 | | Interest one month. | |
| | Repairing gravel cars | | 318 77 | | Balance | 571,086 32 |
| | | | 586,239 63 | | | 586,239 63 |
| | Interest to date | 3,419 72 | | | | |
| 1858. | | | | 1858. | | |
| Jan'y 1 | To balance brought forward | | 571,086 32 | Jan'y 31 | By nett earnings for January | 12,505 92 |
| | | | | | Balance | 558,580 40 |
| | | | | | | 571,086 32 |
| 31 | Interest to date | 3,331 34 | | | Interest one month. | |
| Feb'y 1 | To balance brought forward | | 558,580 40 | Feb'y 28 | By nett earnings for February | 10,171 18 |
| | | | | | Balance | 548,409 22 |
| | | | | | | 558,580 40 |
| 28 | Interest to date | 3,258 38 | | | Interest one month. | |
| March 1 | To balance brought forward | | 548,409 22 | March 31 | By nett earnings for March | 12,922 88 |
| | *Interest on second mortgage bonds paid | | 39,840 00 | | Balance | 587,570 86 |
| | Do .....city bonds ($114,000) paid | | 3,937 50 | | | |
| | Do .....do. ....($200,000) paid | | 6,790 00 | | | |
| | Exchange on same, 3 per cent., paid | | 1,517 02 | | | |
| | | | 600,493 74 | | | 600,493 74 |
| 31 | Interest to date | 3,502 95 | | | Interest for one month. | |

*Here Chamberlain receives $8,000 himself and charges the company interest on it.

Dr. *The La Crosse and Milwaukee Railroad Company in account and interest, at 7 per cent., to September 1, 1861, with S. Chamberlain.* Cr.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1858. | | | | 1858. | | | |
| April 1 | To balance brought forward | | 587,570 86 | April 30 | By nett earnings for April | | 19,152 02 |
| | | | | | Balance | | 568,418 84 |
| | | | | | | | 587,570 86 |
| 30 | Interest to date | 3,427 49 | | | Interest one month. | | |
| May 1 | To balance brought forward | | 568,418 84 | May 31 | By nett earnings for May | | 25,867 99 |
| | Interest paid on first mortgage bonds | | 37,840 00 | | Balance | | 580,863 85 |
| | Exchange on same | | 473 00 | | | | |
| | | | 606,731 84 | | | | 606,731 84 |
| 69 | | | | | | | |
| 31 | Interest on same | 3,539 26 | | | Interest one month. | | |
| June 1 | To balance brought forward | | 580,863 85 | June 30 | By nett earnings for June | | 23,389 73 |
| | | | | | Balance | | 557,474 12 |
| | | | | | | | 580,863 85 |
| 30 | Interest to date | 3,388 37 | | | Interest one month. | | |
| | Carried forward | $30,333 76 | | | | | |

Dr. *The La Crosse and Milwaukee Railroad Company in account and interest, at seven per cent., to September 1, 1861, with S. Chamberlain.* Cr.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1858. | | | | 1858. | | | |
| July 1 | To balance brought forward | $30,333 76 | $557,474 12 | July 31 | By nett earnings for July | | 25,171 43 |
| | Stone and cement for drawbridge at Portage | | 1,089 81 | | Balance | | 534,638 38 |
| | Hauling engine and cars over dividing ridge | | 53 00 | | | | |
| | Lumber for water tanks | | 76 58 | | | | |
| | Chairs and spikes | | 1,116 30 | | | | |
| | | | $559,809 81 | | | | 559,809 81 |
| 31 | Interest to date | 3,265 55 | | | Interest one month. | | |
| Aug. 1 | To balance brought forward | | 534,638 38 | Aug. 31 | By nett earnings for August | | 13,630 41 |
| | | | | | Balance | | 521,007 97 |
| | | | | | | | 534,638 38 |
| 31 | Interest to date | 3,119 55 | | | Interest one month. | | |
| Sept. 1 | To balance brought forward | | 521,007 97 | Sept. 30 | By nett earnings for September | | 37,120 31 |
| | * Interest on second mortage bonds paid | | 39,680 00 | | Balance | | 534,801 23 |
| | Do ..city bonds ($114,000) paid | | 3,797 50 | | | | |
| | Do ..do. ($200,000) paid | | 6,877 50 | | | | |
| | Advertising in New York | | 54 48 | | | | |
| | Exchange, 1 per cent | | 504 09 | | | | |
| | | | 571,921 54 | | | | 571,921 54 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 30 | Interest to date | 3,336 20 | | | Interest one month. | |
| Oct. | 1 | To balance brought forward | | 534,801 23 | Oct. 31 | By nett earnings for October | 28,931 16 |
| | | Building road beyond La Crosse depot | | 2,656 75 | | Balance | 526,042 77 |
| | | Disbursements on La Crosse depot | | 12,190 95 | | | |
| 570 | | Payments for right of way | | 5,325 00 | | | |
| | | | | 554,973 93 | | | 554,973 93 |
| | 31 | Interest to date | 3,237 34 | | | Interest one month. | |
| Nov. | 1 | To balance brought forward | | 526,042 77 | Nov. 30 | By nett earnings for November | 22,744.43 |
| | | Interest on first mortage bonds paid | | 36,940 00 | | Balance | 552,749 80 |
| | | Paid sinking fund on same | | 12,000 00 | | | |
| | | Advertising | | 21 85 | | | |
| | | Exchange | | 489 61 | | | |
| | | | | 575,494 23 | | | 575,494 23 |
| | 30 | Interest to date | 3,357 04 | | | Interest one month. | |
| Dec. | 1 | To balance brought forward | | 552,749 80 | Dec. 31 | By nett earnings for December | 12,517 22 |
| | | Paid for right of way | | 240 00 | | Balance | 540,472 58 |
| | | | | 552,989 80 | | | 552,989 80 |
| | 31 | Interest to date | 3,225 76 | | | Interest one month. | |
| 1859. | | | | | 1859. | | |
| Jan. | 1 | To balance brought forward | | 540,472 58 | Jan. 31 | By nett earnings for January | 6,415 71 |
| | | Paid for right of way | | 1,010 00 | | Balance | 545,128 11 |
| | | Do.....do.....to Imbusch | | 254 74 | | | |
| | | Gravelling between Milwaukee and Beaver Dam | | 9,806 50 | | | |
| | | | | 551,543 82 | | | 551,543 82 |
| | 31 | Interest to date | 3,300 66 | | | Interest one month. | |
| Feb. | 1 | To balance brought forward | | 545,128 11 | Feb. 28 | By nett earnings for February | 2,450 62 |
| | | Paid for right of way | | 579 00 | | † 200 second mortgage bonds, at 50 per cent | 100,000 00 |
| | | | | | | Balance | 443,256 49 |
| | | | | 545,707 11 | | | 545,707 11 |
| | 28 | Interest to date | 3,183 29 | | | Interest one month. | |
| | | Carried over | $56,359 15 | | | | |

* Here again the same absurd charge as on the preceding page.

† By charging these bonds *here*, instead of at the *commencement* of the account, the Co. is charged with $10,372 46 of interest !!

571 DR. *The La Crosse and Milwaukee Railroad Company, in account and interest at seven per cent., to September 1, 1861, with S. Chamberlain.* CR.

| 1859. | | | | 1859. | | |
|---|---|---|---|---|---|---|
| March 1 | To balance brought forward | $56,359 15 | $443,256 49 | March 31 | By nett earnings for March | $1,561 88 |
| | * Interest on second mortgage bonds paid | | 39,880 00 | April 30 | Do.....do.....April | 575 21 |
| | Do..... city bonds ($114,000) paid | | 3,710 00 | May 31 | Do.....do.....May | 14,025 53 |
| | Do.....do. ... ($200,000) paid | | 6,387 50 | | Balance | 518,754 64 |
| | Advertising | | 22 40 | | | |
| | Exchange | | 750 00 | | | |
| | Right of way to J. A. Hoover | | 3,236 52 | | | |
| May 1 | Paid interest on first mortage bonds | | 37,100 00 | | | |
| | Advertising | | 17 60 | | | |
| | Exchange | | 556 75 | | | |
| | | | 534,917 26 | | | $534,917 26 |
| 31 | Interest to March 31st | 3,120 34 | | | Interest one month, March. | |
| | Do.....April 30th | 3,120 34 | | | Do..... do.....April. | |
| | Do.....May 31st | 3,120 34 | | | Do.....do.....May. | |
| June 1 | To balance brought forward | | 518,754 64 | June 3 | By nett earnings for June | 18,175 59 |
| | | | | | Balance | 500,579 05 |
| | | | | | | 518,754 64 |
| 30 | Interest to date | 3,026 06 | | | Interest one month. | |
| July 1 | To balance brought forward | | 500,579 05 | July 31 | By nett earnings for July | 662 10 |
| Aug. 1 | Paid for right of way | | 1,773 21 | Aug. 31 | Do.....do....August | 19,308 98 |
| | | | | | Balance | 482,391 18 |
| | | | 502,352 26 | | | 502,352 26 |
| July 31 | Interest to date | 2,930 38 | | | Interest one month, July. | |
| Aug. 31 | Do....do | 2,930 38 | | | Do.....do .....August. | |
| Sept. 1 | To balance brought forward | | 482,391 18 | Sept. 30 | By nett earnings for September | 66,264 48 |
| | | | | | Balance | 416,126 70 |
| | | | | | | 482,391 18 |
| 30 | Interest to date | 2,813 94 | | | Interest one month. | |
| Oct. 1 | To balance brought forward | | 416,126 70 | Oct. 31 | By nett earnings for October | [illegible] 57 |
| | | | | | Balance | [illegible] 83 |
| | | | | | | 416,126 70 |
| 31 | Interest to date | 2,427 40 | | | Interest one month. | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Nov. | 1 | To balance brought forward | | 344,146 33 | Nov. 30 | By nett earnings for November paid to Chamberlain | 18,446 73 |
| | | | | | | Other receipts applicable to "operating expenses," and charged to the account of "operating expenses," as paid by Selah Chamberlain, but which were paid by trustees, and not by Chamberlain | 68,789 73 |
| | | | | | | Balance | 256,909 87 |
| | | | | | | | 344,146 33 |
| | 30 | Interest to date | 2,007 51 | | | Interest one month. | |
| | | Carried forward | 81,855 84 | | | | |
| 572 | | | | | | | |
| Dec. | 1 | To balance brought forward | $81,855 84 | $256,909 87 | | Amount of interest brought over. | |
| | | Paid for right of way | | 1,262 98 | | | |
| | | Accounts paid by Chamberlain, and afterwards charged to "operating expenses," to wit: | | | | | |
| | | S. Chamberlain & Co | | 715 30 | | | |
| | | D. W. Keys | | 230 23 | | | |
| | | Beck & Gardiner | | 110 00 | | | |
| | | Lloyd & Supplee | | 57 00 | | | |
| | | Milwaukee Gas Co | | 44 10 | | | |
| | | Cash paid car notes | | 14,195 71 | | | |
| | | Do....trustees, (P. Dow) | | 11,460 00 | | | |
| | | Do....old coupons | | 195 00 | | | |
| | | | | $285,180 19 | | | |
| 1861. | | | | | | | |
| Sept. | 1 | Interest to date, (21 months) | 34,934 55 | | | | |
| | | Balance due S. Chamberlain | | $285,180 19 | | | |
| | | Total amount int. to debit | $116,790 39 | | | | |

* Here again the same absurd charge as on the preceding page, making $24,000 Chamberlain has paid to himself and charged the company.

NOTE.—By the manner of making out this account, Chamberlain is actually allowed to *charge the company interest* on the money he receives *from the company* to pay the coupons on its own bonds!!! while the company gets no interest *from him* on $534,413 of nett earnings!! and he at the same time is charging the company interest on the funds he receives as their agent, and *pays himself* on *his own claims*, and for work *done by himself!!*

The absurdity of this whole interest account is shown in the fact that this makes the company pay him the sum of $5,040, as interest on the $24,000 of coupons he paid to himself, as interest on the $200,000 second mortgage bonds, which the court ordered struck out of his account and charged to him!!!

573 *Seventh exception.*

For that in said account stated the said masters allow said Chamberlain, under date "March 1, 1858, paid interest on 2d mortgage bonds, $39,840 dollars; Sept. 1, 1858, paid interest on 2d mortgage bonds, $39,680 dollars; March 1, 1859, paid interest on 2d mortgage bonds, 39,-80 dollars, and upon each of these items the masters allow Chamberlain interest compounded by monthly rests. (See Schedule third, filed with the report.)

Whereas, in each of said payments $8,000 dollars, or $24,000 dollars in all, was paid by said Chamberlain to himself on the 200,000 dollars of said bonds, which the court decides were chargeable to said Chamberlain, and the masters nowhere in said account charge said Chamberlain with any part of said interest so received by him of himself, nor the interest upon said interest, which is in said account charged against said company.

*Eighth exception.*

The court directed the masters to charge said Chamberlain with $100,000 dollars on account of 200,000 dollars of second mortgage bonds, delivered by said company to said Chamberlain at the date of his judgment against the company, October 2nd, 1857. The masters ought to have deducted that amount, as of that date, thereby cancelling $100,000 dollars of Chamberlain's account at that time.

Whereas, the masters compound interest by monthly rests upon said Chamberlain, from 2nd October, 1857, until the 28th day of February, 1859, before deducting said 100,000 dollars, thereby allowing said Chamberlain wrongfully, upon 100,000 dollars of his said judgment which was paid at its date by said bonds, the sum of $10,372 dollars and 46 cents interest.

*Ninth exception.*

For that the masters have not charged said Chamberlain with 20,000 dollars which he will receive of the interest reported already accrued and now due on the 2d mortgage bonds. The whole amount of interest reported due is $100,000 dollars, and one-fifth of this will be paid to Chamberlain on the 200 of said bonds held by him, and which the court orders him to account for.

There having been no settlement between the company and Chamberlain, he should be charged with this amount which he is to receive.

*Tenth exception.*

For that the masters have allowed said Chamberlain interest upon the following items from their respective dates, viz:

| | |
|---|---|
| March 1st, 1858.—Paid on 2d mortgage bonds..... | $39,840 00 |
| " " city bonds..... | 3,937 50 |
| " " " ..... | 6,790 00 |
| Exchange 3 per cent..... | 1,517 02 |
| | $52,084 52 |

| | | |
|---|---|---|
| 574 | Interest on $52,084 52 from M'ch 1st, '58, to Sept. 1st, '61, or 3 years and 6 months..... | $12,760 50 |
| May 1st, '58. | Paid on 1st morgage bonds..... ..... | $37,840 00 |
| | Exchange ..... ..... | 473 00 |
| | | $38,318 00 |
| | Interest on $38,318 from May 1st, '58, to Sept. 1st, 61, or 3 years and 4 mo's..... | $8,939 70 |
| Sept. 1st, '58.— | Paid on 2d mortgage bonds ..... | 39,680 00 |
| | " " city bonds ..... ..... | 3,797 50 |
| | " " " ..... ..... | 6,877 50 |
| | Exchange..... ..... ..... ..... | 504 09 |
| | | $50,859 09 |
| | Interest on $50,859 09 from Sept. 1st, '58, to Sept. 1st, '61, or 3 years, is ..... | $10,680 39 |
| Nov'r 1st, '58.— | Paid on 1st mortgage bonds..... | $36,940 00 |
| | " " sinking fund on same..... | 12,000 00 |
| | Exchange..... ..... ..... ..... | 489 61 |
| | | $49,429 61 |
| | Interest on $49,429 61 from Nov. 1st, '58, to Sept. 1st, '61, or 2 years and 10 mo's..... .. ..... | $9,803 40 |
| March 1st, 1859.— | Paid on 2d mortgage bonds..... | $39,880 00 |
| | " " city bonds..... ..... ..... | 3,700 00 |
| | " " " ..... ..... | 6,387 50 |
| | Exchange..... | 750 00 |
| | | $50,727 50 |
| | Interest on $50,727 50 from M'ch 1st, '59, to Sept. 1st, '61, or 2 years and 6 mo's ..... ..... | $8,877 22 |
| May 1st, '59.— | Paid on 1st mortgage bonds..... | $37,100 00 |
| | Exchange ..... ..... | 556 75 |
| | | $37,656 75 |
| | Interest on $37,656 75 from May 1st, '59, to Sept. 1st, '61, or 2 years and 2 mo's..... | $5,711 16 |

Whereas the said Chamberlain paid out said sums as agent of the said railroad company, and paid the same with the funds of the said company. By this error the masters pay Chamberlain 56,772 dollars and 45 cents interest on money belonging to the company and which he disbursed as its agent.

See lease of company to Chamberlain, on file, and copy attached to Chamberlain's answer; Schedule 3 to report.

This exception applies in principle to every disbursement by Chamberlain of the company's funds in payment of the company's debts, and would reduce Chamberlain's account many thousand dollars not specified in these exceptions, but which these defendants here and now object to, and except to said report accordingly.

*Tenth and half exception.*

575 For that the masters have found the 2 judgments in favor of N. Cleveland against said company prior as liens to the judgment in favor of Sebre Howard, said Howard's judgment having been entered in the circuit court for Milwaukee county on the 1st day of May, 1858, and also the judgment in favor of Graham & Scott, which was docketed in the circuit court for Milwaukee county on the 21st day of September, A. D. 1858, and the said Newcomb Cleveland's said judgments were not docketed until the 20th day of April, 1859.

*Eleventh exception.*

For that the said masters have not charged said Chamberlain any interest on the receipts by him of the company's funds:

Whereas the said masters should have added to the said net receipts interest on the same from the dates when received to the end of each month, casting interest on the receipts of each month at an average, that is, casting upon each month's net receipts, 15 days' interest.

*Twelfth exception.*

For that the masters have allowed said Chamberlain, which is included in said judgment, for ballasting from Beaver Dam to Portage, 192,542 cubic yards, $\$77,016\frac{80}{100}$ dollars.

See Exhibit No. 10 to evidence before masters, and Schedule fourth, filed with report.

Now the evidence shows that the whole line of road is 34 miles, or —— feet, and if this whole line were ballasted 18 inches deep, 14 feet wide sub-grade, without allowing for slopes or ties, the ballasting would only amount to 139,621 cubic yards, and at the price charged would be $\$21,168\frac{40}{100}$ dollars less than the amount allowed.

*Thirteenth exception.*

For that the said masters have allowed, as included in said judgment, the following item:

"Ballasting $45\frac{32}{100}$ miles, $2,000 per mile, $90,640 dollars."

There is no evidence before the masters that this work was done under contract; there is no evidence before the masters of the value of doing it; and the item is allowed improperly.

*Fourteenth exception.*

For that the said masters have allowed to said Chamberlain certain items claimed to have been disbursed by him under said lease.

Whereas the proof referred to in the third exception proves said lease was given and accepted with intent to hinder and delay the creditors of said company, and is therefore void.

576 CARPENTER & GRIDLEY,
*For said Defendant.*

MAT. H. CARPENTER,
*Sol'r and of Counsel for said Defendants.*
LEVI HUBBELL,
*Sol. and of Counsel for Def'ts,*
*Sebre Howard & John S. Rockwell.*

And same day (Nov. 2, 1861) came Alexander Fleming for the Milwaukee and Minnesota R. R. Co., and filed exceptions to the masters' report as follows:

*Exceptions to masters' rep't of A. Fleming.*

In the district court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON and JAMES T. SOUTTER, complainants,
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD *et als.*, defendants.

Alexander Fleming, who defends this cause in the name of and on behalf of the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint of Greene C. Bronson and James T. Soutter, comes here into said court and makes and files exceptions to the report of Winfield Smith, Jerome R. Brigham, I. A. Lapham, masters, to whom this cause was referred by an order of this court made on the 11th day of March, A. D. 1861, and which report was filed by said masters on the 7th day of October, A. D. 1861, as follows, that is to say:

*First exception.*

For that the said masters refused to give this defendant reasonable time to put in evidence as to the claim of Selah Chamberlain, one of said defendants; this defendant offering to give evidence of engineers as to the amount of work done and things furnished by said Chamberlain, constituting the claim made by said Chamberlain against the La Crosse and Milwaukee Railroad Company, and which evidence would show that said Chamberlain's claim is unjust and unfounded.

*Second exception.*

The masters were required by the order of the court, and the opinion of the court furnished to them for their guidance, to state an account

between Selah Chamberlain and the La Crosse and Milwaukee Railroad Company, and in doing so, first, to ascertain the real amount of said company's indebtedness to him, said Chamberlain; that is, all the indebtedness of the company to him of every sort and kind;
577 and then, second, to ascertain the amount of *such indebtedness* that was included in his said judgment against the said company, and report the amount of said Chamberlain's several specific claims, and this would, of course, show how much of the indebtedness to Chamberlain was, and how much of it was not, a judgment lien upon the property of the company, covered by the mortgage in foreclosure in this cause.

Whereas the said masters have, in stating said account, not at all observed this duty, nor at all separated the amounts now due to said Chamberlain upon the judgment from the amount due Chamberlain on items not included in the judgment; but, on the contrary, have blended the judgment with other items which are not a lien upon the road in one account, and have arrived at a balance due Chamberlain on the account including the amount that is, and the amount that is not, a judgment lien upon said property.

See the report, pages 9, 10.

See, also, schedule *third* returned with and as part of said report.

*Third exception.*

The judgment of Chamberlain against the La Crosse and Milwaukee Railroad Company was attacked in the answer of this defendant, as fraudulent, and as having been confessed for too much. The evidence introduced by this defendant before the masters shows that Chamberlain's judgment was confessed by said La Crosse and Milwaukee Railroad Company with the intent to hinder, delay, and defraud its creditors, and that said Chamberlain, when said judgment was confessed, well knew of such intent, and accepted said confession of judgment, and caused the same to be entered up and docketed for the purpose of aiding said company in accomplishing its said unlawful designs.

See testimony produced by this defendant, and other defendants, before the masters, admitted by stipulation in writing, and marked by said masters Exhibit No. 24.

See also, particularly, the testimony of Byron Kilbourn, beginning on page of said exhibit, marked page 143.

And the said masters ought to have reported that fact to said court, and ought to have reported that the said judgment was, as to all the creditors of said La Crosse and Milwaukee Railroad Company, absolutely null and void, and no lien or incumbrance upon the property covered by the mortgage being foreclosed in this cause. And that the said Chamberlain was entitled to nothing out of the surplus which may arise on the sale of the said property under a decree in this cause until after all other creditors of said company shall be fully paid.

*Fourth exception.*

The judgment of the said Chamberlain against the said La
578 Crosse and Milwaukee Railroad Company was attacked in the

answer of this defendant, on the ground that it was confessed with the design and intent to thereby hinder, delay, and defraud the creditors of said La Crosse and Milwaukee Railroad Company, and for too much.

The testimony before the masters (see exhibit) shows that Chamberlain, in his own account, and in the report of Woodward, chief engineer, upon which said judgment was confessed, claimed, and was allowed in said judgment, this item, viz: "Grading and masonry, equal to 9½ miles, 96,000 dollars."

The masters in their said report, in stating the amount of real "indebtedness from said company to said Chamberlain, included in said judgment" for the above item, and for things embraced in the above item, allow an item as follows, viz: "Grading, bridging, and masonry, proportionably equal in value, $168,275 dollars. Thus reporting to this court, as included in said judgment, $72,275 dollars for a specific amount of work that was not included in said judgment when it was confessed, and which is not therefore a judgment lien on the property covered by the mortgage being foreclosed in this cause.

The masters should have stated this last amount named, if they found it due from said company to Chamberlain, among the items of indebtedness not included in said judgment.

*Fifth exception.*

In the account presented by said Chamberlain before the masters he charges against the company an item as follows: "Completing road to New Lisbon, $56,500 dollars. And this amount was all that said Chamberlain, in said account, claimed for this work.

Whereas the said masters in the account stated by them allow this item, as follows: "Completing track-laying, ballasting, and grading on line from Portage City to New Lisbon, 62,000 dollars." Thus allowing said Chamberlain for this item $5,500 dollars more than the said Chamberlain himself claimed, which, with the monthly rests and compounding of interest on said $5,500 dollars, makes a total amount charged to this company in this item of $7,152 dollars and 92 cents.

*Sixth exception.*

For that said masters have, in the account stated by them between said Chamberlain and said company, compounded the interest every month, by making monthly rests, and adding the interest for each month into the balance upon which interest is computed for the next month—see schedule third, filed with the report—so that the said masters allow said Chamberlain 16,646 dollars and 86 cents compound interest, as is shown by the following statement of said account, which is identical with the account stated by said masters, except that the interest by being kept in separate column is not compounded monthly as it is in the account stated by the masters. The said account, conceding its items of debt and credit to be correct, which, however, is denied, should have been stated as follows:

*The La Crosse and Milwaukee Railroad in account and interest, at seven per cent., to September 1st, 1861, with S. Chamberlain.*

DR.

| | | | |
|---|---|---|---|
| 1857. Oct. 2 | To real amount due on items included in judgment | | $568,975 77 |
| | Grading depot grounds at Kilbourn City | | 973 20 |
| | Damages for detention and change of line at Lisbon | | 1,121 00 |
| | Draft on Bank of the Republic, September 4th, 1857, included in settlement, but not paid | | 5,000 00 |
| | Getting engines, cars, and iron over Wisconsin river | | 3,119 43 |
| | | | 579,189 40 |
| 31 | Interest from October 2 to date | $3,265 98 | |
| Nov. 1 | To balance brought forward | | 548,619 11 |
| 30 | Interest to date | 3,200 27 | |
| Dec. 1 | To balance brought forward | | 523,920 86 |
| | Completing track-laying, ballasting, and grading on line from Portage City to New Lisbon | | 62,000 00 |
| | Repairing gravel cars | | 318 77 |
| | | | 586,239 63 |
| | Interest to date | 3,419 72 | |
| 1858. Jan. 1 | To balance brought forward | | 571,086 32 |
| 31 | Interest to date | 3,331 34 | |
| Feb. 1 | To balance brought forward | | 558,580 40 |
| 28 | Interest to date | 3,258 38 | |
| March 1 | To balance brought forward | | 548,409 22 |
| | *Interest on second mortage bonds paid | | 39,840 00 |
| | Interest on city bonds ($114,000) paid | | 3,937 50 |
| | Interest on city bonds ($200,000) paid | | 6,790 00 |
| | Exchange on same, 3 per cent., paid | | 1,517 02 |
| | | | 600,493 74 |

CR.

| | | |
|---|---|---|
| 1857. Oct. 31 | By nett earnings for October | $30,570 29 |
| | Interest one month. | |
| | Balance | 548,619 11 |
| | | 579,189 40 |
| Nov. 30 | By nett earnings for November | 24,698 25 |
| | Balance | 523,920 86 |
| | | 548,619 11 |
| | Interest one month. | |
| Dec. 31 | By nett earnings for December | 15,153 31 |
| | Interest one month. | |
| | Balance | 571,086 32 |
| | | 586,230 63 |
| 1858. Jan. 31 | By nett earnings for January | 12,505 92 |
| | Balance | 558,580 40 |
| | | 571,086 32 |
| | Interest one month. | |
| Feb. 28 | By nett earnings for February | 10,171 18 |
| | Balance | 548,409 22 |
| | | 558,580 40 |
| | Interest one month. | |
| Mar. 31 | By nett earnings for March | 12,922 88 |
| | Balance | 587,570 86 |
| | | 600,493 74 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 31 | Interest to date | 3,502 95 | | | Interest for one month. | |
| April | 1 | To balance brought forward | | 587,570 86 | April 30 | By nett earnings for April | 19,152 02 |
| | | | | | | Balance | 568,418 84 |
| | | | | 587,570 86 | | | 587,570 86 |
| | 30 | Interest to date | 3,427 49 | | | Interest one month. | |
| May | 1 | To balance brought forward | | 568,418 84 | May 31 | By nett earnings for May | 25,867 99 |
| | | Interest paid on first mortgage bonds | | 37,840 00 | | Balance | 580,863 85 |
| | | Exchange on same | | 473 00 | | | |
| | | | | 606,731 84 | | | 606,731 84 |
| 580 | 31 | Interest on same | 3,539 26 | | | Interest one month. | |
| June | 1 | To balance brought forward | | 580,863 85 | June 30 | By nett earnings for June | 23,389 73 |
| | | | | | | Balance | 557,474 12 |
| | | | | | | | 580,863 85 |
| | 30 | Interest to date | 3,388 37 | | | Interest one month. | |
| | | Carried forward | 30,333 76 | | | | |

* Here Chamberlain receives $8,000 himself and charges the company interest on it.

*The La Crosse and Milwaukee Railroad in account and interest, at seven per cent., to September 1st, 1861, with S. Chamberlain.*

DR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1857. | | | | | 1857. | | |
| Oct. 2 | To real amount due on items included in judgment | | $568,975 77 | | Oct. 31 | By nett earnings for October | $30,570 29 |
| | Grading depot grounds at Kilbourn City | | 973 20 | | | Interest one month. | |
| | Damages for detention and change of line at Lisbon | | 1,121 00 | | | Balance | 548,619 11 |
| | Draft on Bank of the Republic, September 4th, 1857, included in settlement, but not paid | | 5,000 00 | | | | |
| | Getting engines, cars, and iron over Wisconsin river | | 3,119 43 | | | | |
| | | | 579,189 40 | | | | 579,189 40 |
| 31 | Interest from October 2 to date | $3,265 98 | | | | | |
| Nov. 1 | To balance brought forward | | 548,619 11 | | Nov. 30 | By nett earnings for November | 24,698 25 |
| | | | | | | Balance | 523,920 86 |
| | | | | | | | 548,619 11 |
| 30 | Interest to date | 3,200 27 | | | | Interest one month. | |
| Dec. 1 | To balance brought forward | | 523,920 86 | | Dec. 31 | By nett earnings for December | 15,153 31 |
| | Completing track-laying, ballasting, and grading on line from Portage City to New Lisbon | | 62,000 00 | | | Interest one month. | |
| | Repairing gravel cars | | 318 77 | | | Balance | 571,086 32 |
| | | | 586,239 63 | | | | 586,230 63 |
| | Interest to date | 3,419 72 | | | | | |
| 1858. | | | | | 1858. | | |
| Jan. 1 | To balance brought forward | | 571,086 32 | | Jan. 31 | By nett earnings for January | 12,505 92 |
| | | | | | | Balance | 558,580 40 |
| | | | | | | | 571,086 32 |
| 31 | Interest to date | 3,331 34 | | | | Interest one month. | |
| Feb. 1 | To balance brought forward | | 558,580 40 | | Feb. 28 | By nett earnings for February | 10,171 18 |
| | | | | | | Balance | 548,409 22 |
| | | | | | | | 558,580 40 |
| 28 | Interest to date | 3,258 38 | | | | Interest one month. | |
| March 1 | To balance brought forward | | 548,409 22 | | Mar. 31 | By nett earnings for March | 12,922 88 |
| | *Interest on second mortage bonds paid | | 39,840 00 | | | Balance | 587,570 86 |
| | Interest on city bonds ($114,000) paid | | 3,937 50 | | | | |
| | Interest on city bonds ($200,000) paid | | 6,790 00 | | | | |
| | Exchange on same, 3 per cent., paid | | 1,517 02 | | | | |
| | | | 600,493 74 | | | | 600,493 74 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 31 | Interest to date | 3,502 95 | | | Interest for one month. | |
| April | 1 | To balance brought forward | | 587,570 86 | April 30 | By nett earnings for April | 19,152 02 |
| | | | | | | Balance | 568,418 84 |
| | | | | | | | 587,570 86 |
| | 30 | Interest to date | 3,427 49 | | | Interest one month. | |
| May | 1 | To balance brought forward | | 568,418 84 | May 31 | By nett earnings for May | 25,867 99 |
| | | Interest paid on first mortgage bonds | | 37,840 00 | | Balance | 580,863 85 |
| | | Exchange on same | | 473 00 | | | |
| | | | | 606,731 84 | | | 606,731 84 |
| 580 | 31 | Interest on same | 3,539 26 | | | Interest one month. | |
| | June 1 | To balance brought forward | | 580,863 85 | June 30 | By nett earnings for June | 23,389 73 |
| | | | | | | Balance | 557,474 12 |
| | | | | | | | 580,863 85 |
| | 30 | Interest to date | 3,388 37 | | | Interest one month. | |
| | | Carried forward | 30,333 76 | | | | |

* Here Chamberlain receives $8,000 himself and charges the company interest on it.

*The La Crosse and Milwaukee Railroad Company in account and interest, at 7 per cent., to September 1st, 1861, with S. Chamberlain.*

| Dr. | | | | Cr. | | |
|---|---|---|---|---|---|---|
| 1858. | | | | 1858. | | |
| July 1 | To balance brought forward | $30.333 76 | $557,474 12 | July 31 | By nett earnings for July | $25,171 43 |
| | Stone and cement for drawbridge at Portage | | 1,089 81 | | Balance | 534,638 38 |
| | Hauling engine and cars over dividing ridge | | 53 00 | | | |
| | Lumber for water tanks | | 76 58 | | | |
| | Chairs and spikes | | 1,116 30 | | | |
| | | | 559,809 81 | | | 559,809 81 |
| 31 | Interest to date | 3,265 55 | | | Interest one month. | |
| Aug. 1 | To balance brought forward | | 534,638 38 | Aug. 31 | By nett earnings for August | 13,630 41 |
| | | | | | Balance | 521,007 97 |
| | | | | | | 534,638 38 |
| 31 | Interest to date | 3,119 55 | | | Interest one month. | |
| Sept. 1 | To balance brought forward | | 521,007 97 | Sept. 30 | By nett earnings for September | 37,120 31 |
| | *Interest on second mortgage bonds paid | | 39,680 00 | | Balance | 534,801 23 |
| | Interest on city bonds ($114,000) paid | | 3,797 50 | | | |
| | Interest on city bonds ($200,000) paid | | 6,877 50 | | | |
| | Advertising in New York | | 54 48 | | | |
| | Exchange 1 per cent | | 504 09 | | | |
| | | | 571,921 54 | | | 571,921 54 |
| 30 | Interest to date | 3,336 20 | | | Interest one month | |
| Oct. 1 | To balance brought forward | | 534,801 23 | Oct. 31 | By nett earnings for October | 28,931 16 |
| | Building road beyond La Crosse depot | | 2,656 75 | | Balance | 526,042 77 |
| | Disbursements on La Crosse depot | | 12,190 95 | | | |
| 581 | Payments for right of way | | 5,325 00 | | | |
| | | | 554,973 93 | | | 554,973 93 |
| 31 | Interest to date | 3,237 34 | | | Interest one month. | |
| Nov. 1 | To balance brought forward | | 526,042 77 | Nov. 30 | By nett earnings for November | 32,744 43 |
| | Interest on first mortgage bonds paid | | 36,940 00 | | Balance | 532,749 80 |
| | Paid sinking fund on same | | 12,000 00 | | | |
| | Advertising | | 21 85 | | | |
| | Exchange | | 489 61 | | | |
| | | | 575,494 23 | | | 575,494 23 |
| 30 | Interest to date | 3,357 04 | | | Interest one month. | |
| Dec. 1 | To balance brought forward | | 552,749 80 | Dec. 31 | By nett earnings for December | 12,517 22 |
| | Paid for right of way | | 240 00 | | Balance | 540,472 58 |
| | | | 552,989 80 | | | 552,989 80 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1859. | | | | | 1859. | | |
| 31 | Interest to date | 3,225 76 | | | Interest one month. | | |
| Jan. 1 | To balance brought forward | | 540,472 58 | Jan. 31 | By nett earnings for January | | 6,415 71 |
| | Paid for right of way | | 1,010 00 | | Balance | | 545,128 11 |
| | Paid for right of way to Inbusch | | 254 74 | | | | |
| | Gravelling between Milwaukee and Beaver Dam | | 2,806 50 | | | | |
| | | | 551,543 82 | | | | 551,543 82 |
| 31 | Interest to date | 3,300 66 | | | Interest one month. | | |
| Feb. 1 | To balance brought forward | | 545,128 11 | Feb. 28 | By nett earnings for February | | 2,450 62 |
| | Paid for right of way | | 579 00 | | †200 second mortgage bonds, at 50 per cent | | 100,000 00 |
| | | | | | Balance | | 443,256 49 |
| | | | 545,707 11 | | | | 545,707 11 |
| 28 | Interest to date | 3,183 29 | | | Interest one month. | | |
| | Carried over | 56,359 15 | | | | | |

* Here again the same absurd charge as under March, 1858.

† By charging these bonds *here* instead of at the *commencement* of the account the Co. is charged with $10,372 46 of interest!!

*The La Crosse and Milwaukee Railroad Company in account and interest, at seven per cent., to September 1st, 1861, with S. Chamberlain.*



| Dr. | | | | Cr. | | | |
|---|---|---|---|---|---|---|---|
| 1859. | | | | 1859. | | | |
| Mar. 1 | To balance brought forward | $56,359 15 | $443,256 49 | Mar. 31 | By nett earnings for March | | $1,561 88 |
| | *Interest on second mortgage bonds paid | | 39,880 00 | April 30 | Nett earnings for April | | 575 21 |
| | Interest on city bonds ($114,000) paid | | 3,710 00 | May 31 | Nett earnings for May | | 14,025 53 |
| | Interest on city bonds ($200,000) paid | | 6,387 50 | | Balance | | 518,754 64 |
| | Advertising | | 22 40 | | | | |
| | Exchange | | 750 00 | | | | |
| | Right of way to J. A. Hoover | | 3,236 52 | | | | |
| May 1 | Paid interest on first mortgage bonds | | 37,100 00 | | | | |
| | Advertising | | 17 60 | | | | |
| | Exchange | | 556 75 | | | | |
| | | | 534,917 26 | | | | 534,917 26 |
| 31 | Interest to March 31st | 3,120 34 | | | Interest one month, March. | | |
| | Interest to April 30th | 3,120 34 | | | Interest one month, April. | | |
| | Interest to May 31st | 3,120 34 | | | Interest one month, May. | | |
| June 1 | To balance brought forward | | 518,754 64 | June 3 | By nett earnings for June | | 18,175 59 |
| | | | | | Balance | | 500,579 05 |
| | | | | | | | 518,754 64 |
| 30 | Interest to date | 3,026 06 | | | Interest one month. | | |
| July 1 | To balance brought forward | | 500,579 05 | July 31 | By nett earnings for July | | 662 10 |
| Aug. 1 | Paid for right of way | | 1,773 21 | Aug. 31 | By nett earnings for August | | 19,308 98 |
| | | | | | Balance | | 482,391 18 |
| | | | 502,352 26 | | | | 502,352 26 |
| July 31 | Interest to date | 2,930 38 | | | Interest one month, July. | | |
| Aug. 31 | ....do. | 2,930 30 | | | Interest one month, August. | | |
| Sept. 1 | To balance brought forward | | 482,391 18 | Sept. 30 | By nett earnings for September | | 66,264 48 |
| | | | | | Balance | | 416,126 70 |
| | | | | | | | 482,391 18 |
| 30 | Interest to date | 2,813 94 | | | Interest one month. | | |
| Oct. 1 | To balance brought forward | | 416,126 70 | Oct. 31 | By nett earnings for October | | 71,980 37 |
| | | | | | Balance | | 344,146 33 |
| | | | | | | | 416,126 70 |
| 31 | Interest to date | 2,427 40 | | | Interest one month. | | |
| Nov. 1 | To balance brought forward | | 344,146 33 | Nov. 30 | By nett earnings for November paid to Chamberlain | | 18,446 73 |
| | | | | | Other receipts applicable to "operating expenses" and charged to the account of "operating expenses," as paid by Selah Chamberlain, and which were paid by trustees, and not by Chamberlain | | 68,789 73 |

| | | | | | |
|---|---|---|---|---|---|
| | | | | Balance | 256,909 87 |
| | | | | | 344,146 33 |
| 30 | Interest to date | 2,007 51 | | Interest one month. | |
| | Carried forward | 81,855 84 | | | |
| 583 | | | | | |
| Dec. 1 | To balance brought forward | 81,855 84 | 256,909 87 | Amount of interest brought over. | |
| | Paid for right of way | | 1,262 98 | | |
| | Accounts paid by Chamberlain and afterwards charged to "operating expenses," to wit: | | | | |
| | S. Chamberlain & Co | | 715 30 | | |
| | D. W. Keyes | | 230 23 | | |
| | Beck & Gardiner | | 110 00 | | |
| | Lloyd & Supplee | | 57 00 | | |
| | Milwaukee Gas Co | | 44 10 | | |
| | Cash paid car notes | | 14,195 71 | | |
| | Cash paid trustees, (P. Dow) | | 11,460 00 | | |
| | Cash paid old coupons | | 195 00 | | |
| | | | 285,180 19 | | |
| 1861. | | | | | |
| Sept. 1 | Interest to date, (21 months) | 34,934 55 | | | |
| | Balance due S. Chamberlain | | 285,180 19 | | |
| | Total amount int. to debit | 116,790 39 | | | |

*Here again the same absurd charge as on the preceding page, making $24,000 he has received in all, and on which he charges the company interest.

NOTE.—By the manner of making out this account Chamberlain is actually allowed to *charge the company interest* on the money he receives *from the company* to pay the coupons on its own bonds!!! while the company gets no interest *from him* on $534,413 of nett earnings!! and he at the same time is charging the company interest on the funds he receives as their agent, and *pays himself* on *his own claims*, and for work *done by himself!!*

The absurdity of this whole interest account is shown in the fact that this makes the company pay him the sum of $5,040 as interest on the $24,000 of coupons he paid to himself, as interest on the $200,000 second mortgage bonds which the court ordered struck out of his account and charged to him!!!

584 *Seventh exception.*

For that in said account stated the said masters allow said Chamberlain, under date "March 1, 1858.—Paid interest on 2d mort bonds, $39,840 dolls. Sept. 1, 1858.—Paid interest on 2d mort. bonds, $39,680 dollars. March 1, 1859.—Paid interest on 2d mort. bonds, $39,880 dollars." And upon each of these items the masters allow Chamberlain interest, compounded by monthly rests.—(See schedule third, filed with the report.)

Whereas in each of said payments 8,000 dollars, or 24,000 dollars in all, was paid by said Chamberlain to himself on the 200,000 dollars of said bonds which the court decides were chargable to said Chamberlain—and the masters nowhere in said account charge said Chamberlain with any part of said interest so received by him of himself, nor the interest upon said interest which is in said account charged against said company.

*Eighth exception.*

The court directed the masters to charge said Chamberlain with $100,000 dollars, on account of 200,000 dollars of second mortgage bonds delivered by said company to said Chamberlain, at the date of his judgment against the company, October 2nd, 1857. The masters ought to have deducted that amount, as of that date, thereby cancelling 100,000 dollars of Chamberlain's account at that time. Whereas the masters compound interest by monthly rests upon said Chamberlain's claim from 2nd October, 1857, until the 28th day of February, 1859, before deducting said 100,000 dollars, thereby allowing said Chamberlain wrongfully upon 100,000 dollars of his said judgment which was paid at its date by said bonds, the sum of $10,372 dollars and 46 cents interest.

*Ninth exception.*

For that the masters have not charged said Chamberlain with 20,000 dollars, which he will receive of the interest reported already accrued and now due on the 2d mortgage bonds The whole amount of interest reported due is $100,000 dollars; and one-fifth of this will be paid to Chamberlain on the 200 of said bonds held by him, and which the court orders him to account for. There having been no settlement between the company and Chamberlain, he should be charged with this amount which he is to receive.

*Tenth exception.*

For that the masters have allowed said Chamberlain interest upon the following items from their respective dates, viz:

| | | |
|---|---|---|
| March 1st, 1858.—Paid on 2d mortgage bonds..... | | $39,840 00 |
| " " City bonds..... | | 3,937 50 |
| " " City bonds..... | | 6,790 00 |
| 585 Exchange, 3 per cent..... | | 1,517 02 |
| | | $52,084 52 |

| | |
|---|---|
| Interest on $52,084 52 from March 1st, '58, to Sept. 1st, '61, 3 years and 6 mos. | $12,760 58 |
| May 1st, 1858.—Paid on 1st mortgage bonds | $37,840 00 |
| Exchange | 473 00 |
| | $38,318 00 |
| Interest on $38,313 from May 1st, '58, to Sept. 1st, '61, 3 years and 4 mos. | $8,939 70 |
| Sept. 1st, 1858.—Paid on 2d mortgage bonds | 39,680 00 |
| " " City bonds | 3,797 50 |
| " " City bonds. | 6,877 50 |
| Exchange | 504 09 |
| | $50,859 09 |
| Interest on $50,859 09 from Sept. 1st, '58, to Sept. 1st, '61, 3 years, is | $10,680 39 |
| Nov. 1st, 1858.—Paid on 1st mortgage | 36,940 00 |
| " " sinking fund on same | 12,000 00 |
| Exchange | 489 61 |
| | $49,429 61 |
| Interest on $49,429 61 from Nov. 1st, '58, to Sept. 1st, '61, or 2 years and 10 mos. | $9,803 40 |
| March 1st, 1859.—Paid on 2d mortgage bonds | 39,880 00 |
| " " City bonds | 3,710 00 |
| " " City bonds | 6,387 50 |
| Exchange | 750 00 |
| | $50,727 50 |
| Interest on $50,727 50 from Mc'h 1st, '59, to Sept. 1st, '61, or 2 years and 6 mos. | $8,877 22 |
| May 1st, 1859.—Paid on 1st mortgage bonds | 37,100 00 |
| Exchange | 556 75 |
| | 37,656 75 |
| Interest on $37,656 75 from May 1st, '59, to Sept. 1st, '61, or 2 years and 2 mos. | $5,711 16 |

Whereas the said Chamberlain paid out said sums as agent of the said railroad company, and paid the same with the funds of said company. By this error the masters pay Chamberlain 56,772 dollars and 45 cents interest on money belonging to the company, and which he disbursed as its agent.—(See lease of company to Chamberlain, on file, and copy attached to Chamberlain's answer, schedule 3 to report.)

This exception applies in principal to every disbursement by Chamberlain of the company's funds in payment of the company's debts, and would reduce Chamberlain's account many thousand dollars not specified in these exceptions, but which this defendant here and now objects to, and excepts to said report accordingly.

*Eleventh exception.*

For that the said masters have not charged said Chamberlain any interest on the receipts by him of the company's funds; whereas the said masters should have added to the said net receipts interest on the same from the dates when received to the end of each month; casting interest on the receipts of each month, at an average—that is,
586 casting upon each month's net receipts 15 days' interest.

*Twelfth exception.*

For that the masters have allowed said Chamberlain, which is included in said judgment—

For ballasting from Beaver Dam to Portage, 192,542 cubic yards, $77,016\frac{80}{100}$ dollars.

See Exhibit No. 10 to evidence before masters and schedule fourth, filed with report. Now the evidence shows that the whole line of road is 34 miles, or ——— feet; and if this whole line were ballasted 18 inches deep, 14 feet wide—sub-grade—without allowing for slopes or ties, the ballasting would only amount to 139,621 cubic yards, and, at the price charged, would be $\$21,168\frac{40}{100}$ dollars less than the amount allowed.

*Thirteenth exception.*

For that the said masters have allowed as included in said judgment the following item:

"Ballasting $45\frac{32}{100}$ miles, $2,000 per mile, 90,640 dollars."

There is no evidence before the masters that this work was done under contract; there is no evidence before the masters of the value of doing it; and the item is allowed improperly.

*Fourteenth exception.*

For that the said masters have allowed to said Chamberlain certain items claimed to have been disbursed by him under his said lease.

Whereas the proof referred to in the third exception proves said

lease was given and accepted with intent to hinder and delay the creditors of said company, and is therefore void.

MAT. H. CARPENTER,
*Sol. and of Counsel for s'd Def't.*
CARPENTER & GRIDLEY,
*For s'd Def't.*

And afterwards, to wit, on the 6th day of November, 1861, came the said Winfield Smith, Jerome R. Brigham, and I. A. Lapham, masters, and filed their supplemental report, which is as follows:

*Supplemental report of masters.*

District court of the United States for the district of Wisconsin.

| | |
|---|---|
| GREENE C. BRONSON & JAMES T. SOUTTER *ag't* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE & MINNESOTA RAILROAD COMPANY, SELAH CHAMBERLAIN, SEBRE HOWARD, *et als.* | In equity. |

587 *To the Hon. A. G. Miller, judge:*

We, the undersigned, masters, who have heretofore made a report in this cause, dated 1 September, 1861, filed 7 October, 1861, in pursuance of the orders of this court therein referred to, by way of supplement and correction in that report, do hereby further respectfully report:

That an error occurs in the statement of account of the complainants of receipts and disbursements through Prentis Dow, their agent, occasioned by the ommission of a payment made by the said Dow in May, 1860, of interest upon the first mortgage on the eastern division, to the trustees under that mortgage; which payment, being incorrectly supposed by us to have been made on the mortgage executed to these complainants (known as the second mortgage,) was not entered in the account of the complainants as stated by us in the said report, but was considered by us as so much money in the hands of the said Dow or the complainants, and therefore applicable on the said mortgage to the complainants, in reduction of the interest thereon.

The amount of the payment so made by the said Dow is thirty-eight thousand five hundred thirteen dollars and twenty-six cents, ($38,513 26;) which sum should be debited to the La Crosse & Milwaukee Railroad Company in the account stated by us, being schedule first attached to the said report, as of the date of June, 1860. And consequently the interest on the balance in hand, credited to the company in that account (schedule first,) under date of Sept. 1st, 1860, five hundred ninety-eight dollars and fifty-six cents, and also under date of March 1, 1861, five hundred fifty-four dollars and seven cents, should not have been entered in the account, because there was no balance on hand in possession of the said Dow or of the complainants at either of those dates; and in order to rectify the account, the original

payments and these two items of interest on balances should be entered on the debit side of the account, thus increasing by so much the balance of interest due from the company on the said mortgage to the complainants at the date of that report, as follows:

| | | |
|---|---|---|
| 1861, Sept. 1. | To total interest due as per schedule first | $25,594 16 |
| | " payment on first mortgage (as above) | 38,513 26 |
| | " interest on balance credited wrongly Sept. 1, '60 | 598 56 |
| | " interest on balance credited wrongly March, '61 | 554 07 |
| | Total due 1 September, 1861 | $65,260 05 |

The statement in the body of said report of the amount of net revenues in the hands of said Dow, whereby it appears that such revenues—adding interest on advances—amount to $74,405 84, should be corrected by changing that amount to the sum of $38,739 95. The amount of interest due on the said mortgage from the said
588 railroad company at the date of said report, 1 September, 1861, is sixty-five thousand two hundred sixty dollars and five cents, as above stated.

All which is respectfully submitted.

Dated Milwaukee, 2 November, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

November 13, 1861.—This day the petition of Henry Vallette, herein filed, praying to be made a party to this suit, and for leave to file an answer having been argued by counsel; and it appearing that the said petition was presented after the filing of the report of the masters, it is ordered by the court that the prayer of the said petition be, and hereby is, denied.

*Petition of H. Vallette.*

U. S. DIST. COURT, *District of Wisconsin:*

JAMES T. SOUTTER AND GREEN C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. the judge of the district court of the United States for the district of Wisconsin:

The petition of Henry Vallette respectfully shows to the court that he resides in the city of Cincinnatti and State of Ohio, and he holds and is the owner of forty-two bonds of the La Crosse and Milwaukee Railroad Company for one thousand dollars each, which bonds were issued under and are secured by the mortgage or deed of trust executed and delivered by the said the La Crosse & Milwaukee Railroad Company to the said complainants, bearing date the 17th day of

August, A. D. 1857, and which mortgage or deed of trust is set forth in the bill of complaint in this cause.

That of the forty-two bonds so held and owned by your petitioner twenty of them are numbered from number one (1) to number twenty, (20,) both inclusive, and are the first twenty bonds issued under the said trust deed or mortgage; twelve of the bonds so held and owned by your petitioner are of the numbers between No. twenty (20) and number one hundred, (100,) and are of the first one hundred bonds issued by the said the La Crosse & Milwaukee Railroad Company under and pursuant to said mortgage or trust deed, but the particular numbers thereof your petitioner cannot now state more accurately without access to his papers and said bonds, which now remain at Cincinnatti; that the remaining ten bonds held and owned by your petitioner he believes to be of higher numbers than one hundred, but he cannot now state the particular numbers thereof without referring to said bonds which now remain at Cincinnatti.

589

That your petitioner became possessed of said bonds as follows: In or about the month of October, A. D. 1856, your petitioner purchased from Stephen H. Alden, who was then, as your petitioner believes, the financial agent of the said La Crosse and Milwaukee Railroad Company, one hundred shares of the stock of the said the La Crosse and Milwaukee Railroad Company, of one hundred dollars each, amounting nominally to ten thousand dollars, and paid therefor eighty-five cents on the dollar; in the aggregate, $8,500.

That he was induced to make the purchase of said stock by certain representations then made to him by the said Alden, as to the condition and prospects of said company, the value of said stock, and as to the amount of dividends which the said company would pay thereon.

That in the summer of 1857, the stock of said company, in common with that of other railroad companies, greatly depreciated; and in the month of August of that year your petitioner repaired to the city of New York, and there had an interview with the said Alden, and complained to him that your petitioner had been deceived in relation to the value of said stock, and threatened to commence an action against him to recover the loss which your petitioner had sustained in the purchase of said stock.

That thereupon the said Alden exhibited to your petitioner a copy of a resolution of the board of directors of the said the La Crosse and Milwaukee Railroad Company, proposing to make the mortgage or deed of trust described in the bill of complaint in this cause, and to issue the bonds thereby secured, and authorizing the president of said company to sell such bonds to the stockholders of the company at eighty cents on the dollar, payable forty cents in stock or unsecured debt of said company, and forty cents thereof in cash, or upon such other terms and at such price as he might deem expedient, and solicited your petitioner to become a purchaser of some of said bonds. That your petitioner became desirous to invest in such bonds, but hesitated to purchase from the company upon the terms proposed. That said Alden then informed your petitioner that he had already purchased from the company the first one hundred bonds, to be issued under the said mortgage or trust deed, and numbered from No. one to No.

one hundred, inclusive, and had already paid the company therefor in cash or its equivalent, and exhibited to your petitioner a memorandum or certificate showing that he had made such purchase and payment, and that he was entitled to such bonds as soon as the same should be issued, and proposed to sell twenty of such bonds to your petitioner provided your petitioner would surrender to him the original certificates for the said one hundred shares of stock which your petitioner had previously purchased as aforesaid, and would abandon his claim for damages against the said Alden on account of the said purchase of stock made by your petitioner, as aforesaid. That thereupon your petitioner went to the office of the said La Crosse and Milwaukee Railroad Company in New York, and was there shown a duplicate of the memorandum of the sale of the first one hundred of the said bonds by the said company to the said Alden, and was assured by Prentiss Dow, then the financial agent or bookkeeper of the said company, that such sale had been made to the said Alden of the first one hundred of said bonds, and that the same had been paid for to the company by said Alden in advance, and that he would be entitled to receive the first one hundred of such bonds as soon as they should be issued and ready for delivery; and your petitioner was thereupon furnished by said Dow, from the office of said company, with a copy of the said memorandum of the sale of such bonds by the company to the said Alden, with a certificate thereon by said Dow, as agent or bookkeeper of said company; that the same was a copy thereof, and that the terms of the memorandum had been complied with by said Alden, and that he had paid for such one hundred bonds in advance. That thereupon your petitioner purchased from the said Alden twenty (20) of the said bonds, being the twenty numbered from No. one (1) to No. twenty, (20,) both inclusive, and paid him therefor six thousand one hundred and eighty-two dollars in cash or its equivalent, and also, in addition, delivered to said Alden the said one hundred shares of stock of one hundred dollars each, amounting to ten thousand dollars, ($10,000,) and delivered to him the certificates therefor; and such bonds were sent to your petitioner at Cincinnatti, by express from New York, during the month of September, 1857.

590

That the said Alden represented to your petitioner that he had paid to the company sixty cents on the dollar for such bonds in cash or its equivalent; and the certificate and memorandum furnished to your petitioner by the said Dow, as hereinbefore stated, also represented that said Alden had paid to the said company sixty cents on the dollar for such bonds. That at the time your petitioner purchased said bonds, and at the time the same were delivered to him, he had no knowledge, information, suspicion, or belief, that the same or any of them had been issued, sold, or disposed of by said company upon any other terms or conditions than as hereinbefore stated, and he believed the same had been sold in good faith by the company to said Alden for sixty cents on the dollar, and your petitioner purchased and paid for them in good faith, and fully believing that the representations made to him by said Alden and said Dow, and stated in the said memorandum and certificate in relation to the sale of said bonds were true. That said Alden gave as a reason why he was wil-

ling to sell such bonds to your petitioner on such terms was, that he desired to satisfy your petitioner for his supposed loss resulting
591 from the sale of stock hereinbefore mentioned, and your petitioner's claim against him, the said Alden, on account thereof.

That in or about the month of June or July, 1858, your petitioner purchased from Simon Gepheart, of Dayton, Ohio, twelve bonds of one thousand dollars ($1,000) each, issued by the said railroad company and secured by the mortgage or trust deed described in the complaint in this cause, and which are of the numbers between No. twenty (20) and No. one hundred, (100,) being the twelve bonds hereinafter described, and paid therefor nine thousand dollars in bonds of the Indiana Central Railway Company, drawing ten per cent. interest, and on which last-mentioned bonds the interest had, and up to the present time has, been paid, and which your petitioner had paid par, and then and now considers worth par, that is to say, nine thousand dollars. That at the time he purchased the said last-mentioned twelve bonds he knew that they were a part of the first one hundred bonds issued by the said company under the said mortgage or trust deed, and which had been sold by the said company to said Alden as aforesaid, and purchased them because of the information he had derived from Alden and the said Dow, and at the office of the company while in New York, at the time he purchased the twenty bonds from said Alden as hereinbefore stated, and honestly believing them to be worth what he paid the said Gepheart therefor. That at the time he purchased the said last-mentioned bonds from the said Gepheart he had no knowledge, belief, or suspicion, or reason to believe that said last mentioned bonds had not been fairly and legally issued and sold by the said company for sixty cents on the dollar.

That while your petitioner was in New York, in August, 1857, he also subscribed for ten of the bonds of the said railroad company issued under and secured by the mortgage or deed of trust hereinbefore mentioned, for one thousand dollars each, being the ten bonds hereinbefore mentioned of numbers higher than No. one hundred, and paid therefor forty cents, amounting to four thousand dollars, in cash, and forty cents, amounting to four thousand dollars in the unsecured bonds of the said railroad company, then outstanding and unpaid, then selling at from thirty-five to forty cents on the dollar.

That your petitioner returned from New York to his home in Cincinnati about the eighteenth day of August, 1857, and about ten days before the failure of the Ohio Life and Trust Company, up to which time there was no particular excitement in New York or elsewhere, so far as your petitioner knew or believed, in relation to railroad securities.

That immediately after the failure of the Ohio Life and Trust Company the memorable panic of 1857 in financial circles became quite general, and induced a closer scrutiny by capitalists into the value and character of their securities, and particularly into railroad securities.

That your petitioner is not made a party to this suit and has
592 not been here, in the city of Milwaukee, since the commencement of this suit until within the last ten days. That he has relied upon the said complainants and their counsel presenting to

the court all the testimony necessary to sustain and protect the rights and equities of your petitioner in relation to the bonds so held and owned by him as herein stated, in common with the rights and equities of the other holders of bonds secured by said mortgage, and had not supposed that this case had assumed or would assume any position which would render it necessary or proper for your petitioner to make proof of the amount paid by him for his said bonds and the circumstances attending his purchase thereof. That since his arrival here he has examined the record and testimony and papers on file in this case, and read the opinion of the court herein, and is suprised to find that such testimony has not been taken in the case as would show the amount paid by the several bondholders for the bonds owned by them. That he has not been informed by the trustee nor their attorneys that it was necessary or proper for him to become a party to this suit, or to make proof of the amount actually paid for his bonds, or of the circumstances under which he purchased them, or he should long since have applied to the court to be made a party to this suit and to be allowed to take testimony to prove the facts set forth in this petition. That he is now advised and believes that it is necessary, in order to protect his rights, interests, and equities as the owner of the bonds hereinbefore described, that he should be made a party to this suit and should have an opportunity to file an answer therein, setting forth substantially the facts hereinbefore stated, and to take testimony to sustain the same.

Your petitioner further says that he did not hear of the decision made in this cause until some time in the latter part of June or in July last, when he was informed thereof in New York, and that he was then in attendance upon his son who was then ill with consumption, and with whom he was then travelling for his health, and who subsequently deceased, and it was inconvenient and impracticable for him to come to Wisconsin and ascertain the full particulars in relation to the case until his present visit, which was made entirely for that purpose.

Your petitioner therefore prays that he may made a party to this suit, and may be allowed to file an answer herein, setting forth substantially the facts herein stated, and that a reasonable time may be allowed him to take testimony to sustain the same.

HENRY VALLETTE.

DISTRICT OF WISCONSIN, *Milwaukee County, ss:*

Henry Vallette, being duly sworn, says that he has heard read the foregoing petition by him subscribed, and knows the contents thereof, and the same is true of his own knowledge, except as to the
593 matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

HENRY VALLETTE.

Subscribed and sworn to before me this 21st day of October, A. D. 1861.

JOSHUA STARK,
*Notary Public for Milwaukee County, Wisconsin.*

Resworn before me this 15th day of November, A. D. 1861.

JOSHUA LA DUE, *Notary Public.*

U. S. dist. court, dist. of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

GENT'N: Please take notice that on the 29th day of October instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard, a motion will be made herein for an order making Henry Vallette, esq., a party to this suit, and allowing him to file an answer therein and to take testimony; which motion will be founded on the petition of which the foregoing is a copy, and upon the pleadings, proofs, and papers on file in this cause.

Yours, &c.,

PALMER & STARK,
*Solicitors for Henry Vallette.*

To Messrs. BROWN & OGDEN,
*Solicitors for Complainants.*

MILWAUKEE, *Oct.* 21, 1861.

Due service of a copy of within admitted Oct 22d, 1861.
THOMAS L. OGDEN, *Sol. for Compl'ts.*

NOVEMBER 15, 1861.

This day came the parties, by their counsel, and by their agreement in writing filed, Henry Vallette filed his answer to this bill as a party defendant.

*Stipulation.*

United States dist. court, district of Wisconsin.

JAMES T. SOUTTER & GREENE C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

It is hereby stipulated and agreed that, upon the filing of this
594 stipulation, an order may be entered in the above-entitled cause, making Henry Vallette a party defendant in this suit, and allowing him, as such defendant, to file the annexed answer by him subscribed and verified, with the same effect as if said Vallette had been originally a party and the answer had been filed in the month of May, 1861, and the general replication had been filed thereto, and that upon the hearing of this cause the said answer shall be taken as true, and the facts therein stated are admitted, and shall be taken and treated as proved without any further or other proof than this stipulation. Dated November 15th, 1861.

THOMAS L. OGDEN,
*Sol'r for Comp'ts.*
PALM & STARK,
*Sol'rs for Vallette.*
MAT. H. CARPENTER,
*Att'y for Mil. & Min. R. R. Co.,*
*And for A. Fleming and Graham & Scott.*
LEVI HUBBELL,
*Att'y for Sebre Howard and J. S. Rockwell.*

*Answer of H. Vallette.*

U. S. dist. court, district of Wisconsin.

JAMES T. SOUTTER AND GREENE C. BRONSON
*vs.*
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, SELAH CHAMBERLAIN, and others.

The separate answer of Henry Vallett to the bill of complaint of James T. Soutter and Greene C. Bronson, trustees, against the said La Crosse and Milwaukee Railroad Company, Selah Chamberlain, and others.

This defendant now, and at all times hereafter, saving and reserving to himself all manner of benefit of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as he is advised it is material for him to make answer unto, by leave of the court for that purpose first had and obtained, answers and says:

That he holds and is the owner of forty-two bonds, executed and duly issued and disposed of by the said La Crosse & Milwaukee Railroad Company, and which bonds are dated on or about the 1st day of September, A. D. 1857, and are for the payment of one thousand dollars each to the holder thereof on the first day of September, A. D. 1870, at the Bank of the Republic in the city of New York, with interest at the rate of eight per cent., payable semi-annually on the first day of March and the first day of September in each year.

That the said bonds are part and parcel of the bonds mentioned in the bill of complaint in this cause, and are a part of the bonds described in and issued under and pursuant to, and are secured by the
595 mortgage or deed of trust described and set forth in the said bill of complaint, and to foreclose which this action is brought.

And this defendant, further answering, shows to the court that of the said forty-two bonds so held and owned by him, twenty of such bonds are numbered from No. one (1) to number twenty, (20,) both inclusive, and are the first twenty bonds executed, countersigned, and issued by the said La Crosse & Milwaukee Railroad Company, and the said complainants, under and pursuant to the said trust deed or mortgage in said bill of complaint set forth; that twelve of such bonds so held and owned by this defendant are numbered between No. 20 and No. 100, and are of the first one hundred bonds issued and disposed of under and pursuant to the said mortgage or deed of trust, numbered from No. 1 to No. 100; that the remaining ten of the said bonds so held and owned by this defendant are numbered, respectively, Nos. 333, 334, 335, 336, 337, 338, 339, 340, 341, and 342.

And the said Henry Vallette, further answering, says that in or about the month of October, 1856, one Stephen H. Alden was, as this defendant is informed and believes, the financial agent of the said La Crosse & Milwaukee Railroad Company in New York, and as such had power and authority from the said company to make financial negociations

and contracts for said company; that in or about the month and year last aforesaid, in the city of New York, this defendant bargained with the said Stephen H. Alden for the purchase, and did then purchase and pay for, one hundred shares of the stock of the said La Crosse & Milwaukee Railroad Company for one hundred dollars each, amounting nominally to ten thousand dollars, and paid therefor eighty-five cents on the dollar, making an aggregate sum of eight thousand five hundred dollars; that he was induced to make the purchase of said stock by representations then made to him by the said Stephen H. Alden as to the condition and prospects of the said railroad company, the value of said stock, and the amount of dividends which the said railroad company would be able to pay thereon; that in the summer of 1857 the stock of said company greatly depreciated, and in the month of August, in the year last aforesaid, the said stock had so depreciated that it sold at the stock board in New York at about thirty-nine cents on the dollar.

That this defendant, in or about the month of August, 1857, went to New York and there had an interview with said Alden, and complained to him that he had deceived this defendant in relation to the value of said stock, and threatened to commence an action against him to recover the loss which this defendant had sustained by reason of the said one hundred shares of stock; that thereupon the said Alden exhibited to this defendant a copy of a resolution of the board of directors of the said La Crosse and Milwaukee Railroad
596 Company, proposing to make the mortgage or deed of trust set forth in the said bill of complaint, and to issue the bonds therein provided for and to be secured thereby, and authorizing the president of said company to sell the bonds so to be issued and secured to the stockholders of the said company at eighty cents on the dollar, payable forty cents in cash and forty cents in the stock or unsecured debt of said company, or upon such other terms and at such prices as he might deem expedient, and solicited this defendant to become a purchaser of some of said bonds; that this defendant became desirous to invest in such bonds, but declined to purchase from the company upon the terms proposed.

That the said Alden then informed this defendant that he had already purchased from the company the first one hundred bonds to be issued under the said mortgage or trust deed, and numbered from No. one (1) to No. one hundred, (100,) inclusive, and had already paid the company therefor in cash or its equivalent, and exhibited a memorandum or certificate showing that he had made such purchase and payment, and that he was entitled to receive the said one hundred bonds from the said company as soon as the same should be issued and ready for delivery.

The books of said La Crosse and M. Railroad Company prove that the first one hundred bonds of Nos. from No. one (1) to No. one hundred were issued to said S. H. Alden, and proposed to sell twenty of said bonds to this defendant provided this defendant would sell to him (the said Alden) the said one hundred shares of stock which this defendant had previously purchased as aforesaid, and would also surrender to the said Alden the same original stock certificates which

this defendant had received therefor, and would also abandon and relinquish his claim against the said Alden for damages on account of the said purchase of stock so made by this defendant as aforesaid; that thereupon this defendant went to the office of the said railroad company in New York, and was there shown a duplicate of the said memorandum of the sale of the first one hundred of said bonds by the said company to the said Alden, and was then and there assured by Prentiss Dow, who, as this defendant is informed and believes, was then transfer agent of the said company in their said office, that such sale had been made to the said Alden by the said company of the first one hundred of the said bonds, and that the said bonds had been paid for by the said Alden to the said company in advance, and that he, the said Alden, was entitled to receive the first one hundred bonds for one thousand dollars each, issued under and secured by the said mortgage or deed of trust as soon as the same should be issued and ready for delivery; and this defendant was thereupon furnished by the said Dow, from the office of the said company, with a copy of the said memorandum of the sale of such bonds by the said company to the said Alden, having a certificate thereon, made by the said Dow as transfer agent of the said company; that the same was a copy thereof,
597 and that the terms of the memorandum had been complied with by the said Alden, and that he had paid for the said one hundred bonds in advance; that thereupon this defendant purchased from the said Alden the said twenty bonds for one thousand dollars each and interest, numbered from No. one (1) to No. twenty, (20,) inclusive, and paid him therefor six thousand one hundred eighty-two dollars, in cash, and also in addition, as a part of the consideration for the purchase of said bonds, delivered to the said Alden the said one hundred shares of stock of one hundred dollars each, amounting to ten thousand dollars, ($10,000,) and surrendered and delivered to him the original certificates therefor, and that said twenty bonds were, some time in the month of September, 1857, delivered to this defendant, being sent to him by express at Cincinnati.

And this defendant further shows that the whole amount of the principal sum of said bonds, amounting to twenty thousand dollars, still remains unpaid, together with interest thereon at the rate of eight per cent. per annum from the 1st day of Sept. or March, 1859.

That this defendant was informed by the said Alden, and also by the said Dow, and it was declared in and by the said memorandum of the sale made by the company to said Alden, hereinbefore mentioned, and this defendant believes and charges the fact to, that the said Alden had, prior to the purchase of the said bonds by this defendant, paid the said railroad company for the said bonds at the rate of sixty cents on the dollar in cash or its equivalent; that this defendant purchased the said bonds in good faith and in the regular course of business, with full confidence that the same were lawfully issued and disposed of by the said railroad company, and that the same were a good and valid security against said company for the face thereof, and without any knowledge, information, suspicion, or belief that the said bonds, or any of them, had been improperly or illegally issued or disposed of by said company or said complainants.

And this defendant, further answering, shows that afterwards, and in or about the month of June or July, 1858, this defendant purchased from one Simon Gepheart, of Dayton, Ohio, the twelve bonds hereinbefore mentioned, numbered, respectively, Nos.
for one thousand dollars each, issued by the said company under and pursuant to the said mortgage or deed of trust, and secured thereby, and paid the said Gepheart therefor nine thousand dollars ($9,000) in the bonds of the Indiana Central Railway Company, drawing ten per cent. interest, and on which last-mentioned bonds the interest had then, and up to this time has, been paid, and for which this defendant had paid par, and then believed and now believes and alleges to have been worth par, that is to say, nine thousand dollars,
598 ($9,000;) that this defendant purchased the last-mentioned twelve bonds in good faith and in the usual course of trade, and without any knowledge, information, suspicion, or belief that the same had been improperly or illegally issued or disposed of by the said company, and believing that the same had been lawfully and properly issued and disposed of by the said company, and that the same were a good and valid security against said company for the face thereof; and this defendant submits and insists that he is an innocent and bona fide holder of each and all of the said bonds hereinbefore mentioned, and that he is entitled to payment thereof, principal and interest, in full, out of the proceeds of the mortgaged property described in the mortgage or trust deed, set forth in the bill of complaint.

And this defendant further shows that the whole amount of the principal of the last-mentioned twelve bonds, together with the interest thereon from the 1st day of March or September, 1859, still remains unpaid.

This defendant further shows that the remaining ten bonds so held and owned by him, as aforesaid, were subscribed for and purchased by him from the said railroad company in the month of August, 1857, and are numbered, respectively, No. 333, 334, 335, 336, 337, 338, 339, 340, 341, and 342, and are for the payment of one thousand dollars each, and interest at the rate of eight per cent. per annum, and paid therefor to the said company at the rate of eighty cents on the dollar; that of that sum he paid forty cents on the dollar, amounting to four thousand dollars, ($4,000,) in cash, and forty cents on the dollar, amounting to four thousand dollars, ($4,000,) in the unsecured debt of said company then outstanding and unpaid, then selling at about thirty-five cents on the dollar.

And this defendant further shows that it appears by the books of the said La Crosse & Milwaukee Railroad Company that the first one hundred of the said bonds, numbered from No. 1 to No. 100, were issued and sold by the said La Crosse & Milwaukee Railroad Company to the said Stephen H. Alden.

And this defendant submits and insists that in equity and good conscience he should be allowed out of the proceeds arising on a sale of the mortgaged premises the amount due to him for principal and interest on his said bonds.

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and hereby prays

to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY VALLETTE.
PALMER & STARK,
*Solicitors for def't, Henry Vallette.*
H. L. PALMER, *of Counsel.*

599 UNITED STATES OF AMERICA, *District of Ohio, ss.*

On this 14th day of November, A. D. 1861, before me appeared the above-named Henry Vallette, who, being by me duly sworn, deposed and said that he had read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

J. P. C. COTTRILL,
*U. S. Commissioner, Dis't of Wisconsin.*

November 19, 1861, receiver's report for month of October, 1861, filed. And afterwards, to wit, on the 13th day of November, 1861, came the defendant Henry Vallette, by his solicitors, Messrs. Palmer & Stark, and filed exceptions to the masters' report, which are as follows:

*Exceptions of H. Vallette to masters' rep't.*

U. S. dist. court, dis't of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.*

Exceptions taken to the report of Winfield Smith, a master, and Jerome R. Brigham, and Increase A. Lapham, special master of this court, bearing date the 1st of Sept., A. D. 1861, and filed on the 7th day of October, A. D. 1861, on the part of the defendant Henry Vallette.

First exception.—For that the said masters have in their report "stated" the real amount of the principal sum payable in the said bonds, being one thousand bonds of one dollar each, at and allowed such amount at fifty cents on a dollar, viz: Five hundred thousand dollars, and in computing interest thereon stated the interest accrued after the 1st March, 1859, at one hundred thousand dollars, being interest at eight per cent. on the said sum of $500,000.

Second exception.—For that the said masters, in their said report, have not stated and reported that the amount of due for principal on the said bonds secured by said mortgage was one million of dollars instead of five hundred thousand dollars.

600 Third exception.—For that the said masters, in their said report, have not stated and reported the amount of interest on the said bonds accrued from the 1st of March, 1859, on the principal amount secured thereby, at the rate of 8 per cent., but instead thereof,

the said masters have reported such interest only on 50 per cent. of the amount of said bonds.

PALMER & STARK,
*Sol'rs for def't, Henry Vallette.*

*Argument of exceptions to masters' report.*

November 25, 1861.—This day the several exceptions to report of the masters came on to be heard, and not being concluded, the further hearing was adjourned until to morrow morning.

November 26, 1861.—This day came the parties, by their counsel, and the hearing of the several exceptions to the report of the masters was resumed, and not being concluded, the same was adjourned until to-morrow morning.

November 27, 1861.—This day came the parties, by their counsel, and the hearing of the several exceptions to the report of the masters was resumed, and not being concluded, the further hearing was adjourned until Monday morning next.

December 3, 1861.—This day came the parties, by their counsel, and the argument of the exceptions to the masters' report was resumed; and the same not being concluded, the further hearing was adjourned until to-morrow morning.

December 4, 1861.—This day came the parties, by their counsel, and the argument of the exceptions to the report of the masters was resumed; and the same not being concluded, the further hearing was adjourned until to-morrow morning.

*Argument concluded.*

December 5, 1861.—This day came the parties, by their counsel, and resumed the argument of the exceptions to the report of the masters; and the same being concluded, the court took the same under examination.

December 9, 1861.—Receiver's report for month of November, 1861, filed.

*Exceptions overruled, &c.*

January 7, 1862.—This day came the parties, by their counsel, and on consideration of the exceptions of the parties to the report of the masters, and of the arguments of counsel, it is thereupon ordered by the court that all the several exceptions of complainants to said report be, and hereby are, overruled. And it is further ordered by the court that the exceptions filed by Henry Vallette to said report be, and hereby are, overruled.

And it is further ordered that the sixth and seventh exceptions of Selah Chamberlain to said report be, and hereby are, allowed, and that his tenth exception to said report be, and hereby is, overruled.

And it is further ordered by the court that the several remaining exceptions of the defendant Selah Chamberlain, and the several exceptions of the defendants Sebre Howard, Graham & Scott, and the Milwaukee and Minnesota Railroad Company, to said report be held by the court for further consideration.

601 And it is ordered by the court that the said defendants, Sebre Howard, Graham & Scott, the Milwaukee and Minnesota Railroad Company, and any other defendants who have liens subsequent to those claimed by Selah Chamberlain, may file a cross bill against said Chamberlain, contesting the liens under the lease or assignment and judgment claimed by him in his answer. And if the said cross bill is not filed by the first Monday of February next it will be considered by the court as waived.

And the answer of Henry Vallette having been argued and submitted by his counsel, Mr. Palmer, it is ordered by the court that the said answer be, and hereby is, overruled.

And it is further ordered by the court that the report of the masters, allowing forty box cars to be covered by the land grant mortgage of said company to Bronson, Soutter and Knapp, be, and hereby is, confirmed. And that the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box cars, is covered by and included in the first mortgage of the said company from Milwaukee to Portage City. And that all the rolling stock on said road that has been purchased or procured since the court has had possession by its receiver be applied *pro rata*, in proportion to the revenues of the road, to the said first mortgage and the said land grant mortgage.

*Order on receiver.*

January 9, 1862.—Ordered by the court that the receiver pay to Selah Chamberlain four thousand one hundred and forty-eight dollars and six cents, ($4,148 06,) in full of purchase of lot, advanced by said Chamberlain to Jacob A. Hoover, in Milwaukee, for said company. But before said money is paid, said Chamberlain shall convey to the La Crosse and Milwaukee Railroad Company all his interest in and to said premises. Said money may be receipted for by Messrs. Emmons & Van Dyke, the attorneys of said Chamberlain.

*Decree.*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present: the honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON & JAMES T. SOUTTER, Trustees,
*vs.*
The La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company,
602 Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewit C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, The Mercantile Bank of Hartford, Con't, August Lauthoff, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, The Juneau Bank, the Milwaukee Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, and Charles Howard, and Henry Vallette. } In equity.

This day this cause came on to be finally heard upon the bill taken as confessed against the defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Brodhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Edwin Townsend, Charles Quentin, John H. Tesch, Byron Kilbourn, The Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M. Davis, for their having failed to plead, answer, or demur thereto, and upon the bill and the answers of the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, A. Fleming, and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Edwin C. Litchfield, and Ephraim Mariner, and the replications thereto, and the pleadings and proof, and upon the report of the masters herein filed, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, to wit: That the report of Winfield Smith, Jerome R. Brigham, and Increase A. Lapham, masters appointed by this court, wherein the sum of sixty-five thousand two hundred and sixty dollars and five cents appears to be due to the said complainants at the date of said report upon the bonds and mortgage in said bill mentioned for interest, and five hundred thousand dollars for the principal of said bonds, be, and is hereby, confirmed.

It is therefore further ordered, adjudged, and decreed, and this

court doth hereby order, adjudge, and decree, that all and singular the mortgaged premises mentioned in the bill of complaint, in this cause, and hereinafter described, or so much thereof as may be
603 sufficient to raise the amount owing to the complainants, for the several bondholders, for principal, interest, and costs in this cause, be sold at public auction under the direction of the marshal for this district, unless said mortgagor, the La Crosse and Milwaukee Railroad Company, or some one on its behalf, previous to such sale shall pay the said sum of sixty-five thousand two hundred and sixty dollars and five cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, where said premises are situated, and that said marshall give public notice of the time and place of such sale by advertisement published in some newspaper printed in said city and in the city of New York at least once in each week for three months previous to the day of sale; and that said complainants, or any of the parties to this cause, may become the purchaser thereof, and that said marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises, and that said marshall pay to said complainant or their solicitors out of the proceeds of such sale their costs in this cause to be taxed, and that he bring the monies arising from such sale into court for the several bondholders without delay, to abide the further order of the court.

And it is further ordered by the court that bonds included in the mortgage may be received in payment of said purchase at the rate of fifty cents on the dollar in proportion that each bears to the amount of the sale.

And it is further ordered, adjudged, and decreed, that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises and every part and parcel thereof.

And it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into such possession thereof as the said mortgage entitles them to, and that any of the parties to this cause who may be in possession of said premises, or any part thereof, and any person who since the commencement of this cause has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises and a certified copy of the order confirming the report of sale in this cause.

And it is further ordered and decreed by the court that upon the payment into court of the said sum of sixty-five thousand two hundred and sixty dollars and five cents, with interest from this date, and the costs taxed, and such interest as may become payable on the bonds in the meantime, further proceedings under this decree shall then be stayed. And if at any time hereafter there should be any default in the payment of any interest due on said mortgage or of the
604 sum of five hundred thousand dollars, the principal thereof, when the same becomes due and payable at the times men-

tioned in the said bonds and mortgage, the court may, upon petition of the complainant or the holders of said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises to be made under and in conformity to this decree, as aforesaid, for the amount then so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings shall be had as often as a default shall be made.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complainant in this cause, is as follows, viz:

"All and singular the railroad of said company, commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other land and real estate which now constitute, or may hereafter constitute, or be a part of or appertain to said railroads, or either of them. And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made or to be built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, or either of them; and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads, or either of them. And also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City and from Watertown, by the way of Columbus, to Midland aforesaid.

And it is hereby declared to be the intention of the parties
605 to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped. Said railroad from Milwaukee to Portage City is subject

to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to as second mortgage of one hundred and fourteen thousand, dollars, and the next forty miles of said road westward of the eighteen miles is subject to a second mortgage of two hundred thousand dollars.

But it is further ordered that the marshal do not sell all that part of said mortgaged premises as are embraced in the description and relating to the railroad from Watertown by way of Columbus to Midland aforesaid, unless the sale thereof should, in the opinion of the court, be necessary and be required for the payment of the amount of the bonds and mortgage mentioned in this bill as settled by this decree, together with the previous liens on the premises described in said mortgage.

And it is further ordered by the court that the sale of the premises described in the said mortgage and this bill as the railroad and appurtenances from the city of Milwaukee to Portage City be made subject to the mortgages and liens mentioned therein.

And it is further ordered by the court that the sale of said mortgaged premises be made irrespective of and without regard to any claim or interest of the defendant Ephraim Mariner to the same or any part thereof.

A. G. MILLER.

Decree signed, recorded, and enrolled January 15th, A. D. 1862.
J. M. MILLER, *Clerk.*

*Appeal.*

January 17, 1862.—This day came the complainants, by their counsel, in open court, and moved the court for an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court that an appeal be, and hereby is, allowed, and that the said complainants give bond, with sureties to be approved by the judge, in the penalty of two thousand dollars, conditioned to prosecute said appeal to effect and pay all costs that may be awarded against them.

And said bond for appeal by Alexander Mitchell and Levi H. Kellogg in the penalty of two thousand dollars, approved by the judge, filed, as follows:

606 *Bond on appeal of complainants.*

District court of the United States for the district of Wisconsin—In equity.

GREENE C. BRONSON AND JAMES T. SOUTTER, Trustees,
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

Know all men by these presents, that we, Alexander Mitchell and Levi H. Kellogg, are held and firmly bound unto the La Crosse and Mil-

waukee Railroad Company, Selah Chamberlain, Edwin Townsend, Avery Hill, H. O. Rudd, John H. Tesh, Franklin J. Blair, Edmund R. Persons, Ephraim Mariner, Thomas Turton, John Seecomb, Cicero Comstock, Lawrence G. Graham, Donald D. Scott, Edward H. Brodhead, Daniel C. Freeman, Sebre Howard, Joshua Hathaway, Charles Quentin, Sebastian Knetzger, Frederick Lind, August Lauthoff, Moses M. Davis, Byron Kilbourn, George W. Chapman Conrad Wellauer, the Milwaukee and Minesota Railroad Company, the Milwaukee Watertown and Baraboo Railroad Company, the Juneau Bank, Edwin C. Litchfield, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, the Mercantile Bank of Hartford, Conn., Charles Howard, William Gemmel, James Wolstenholme, George R. Mowry, Henry K. Eastman, Ebenezer Higgins, Henry L. Simons, Nathaniel S. Bouton, John S. Rockwell, and Alexander Fleming, defendants in the above entitled action, in the sum of two thousand dollars, to be paid to the said La Crosse and Milwaukee Railroad Company, and the other defendants above named, their executors and administrators. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this seventeenth day of January, A. D. 1862.

Whereas the above named Greene C. Bronson and James T. Soutter, trustees, complainants, have appealed to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the district court of the United States for the district of Wisconsin, now, therefore, the condition of this obligation is such that the above named Greene C. Bronson and James T. Soutter shall prosecute their said appeal to effect, and answer all costs; if they shall fail to make good their appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALEX. MITCHELL. [SEAL.]
LEVI H. KELLOGG. [SEAL.]

Sealed and delivered in the presence of—
PRENTIS DOW.

January 17, 1862. Approved: A. G. MILLER, *Judge.*

607 And came the defendant Henry Vallette, by his counsel, in open court, and moved the court for an appeal to the Supreme Court of theUnited States.

Whereupon it is ordered by the court that his appeal be, and hereby is, allowed, and that he give bond, with sureties to be approved by the judge, in the penalty of five hundred dollars conditioned for the payment of the costs. And same day filed his bond for said appeal, with Moses Kneeland as surety, which bond is approved by the judge, which is as follows:

*Appeal bond of H. Vallette.*

Supreme Court of the United States.

JAMES T. SOUTTER and GREENE C. BRONSON, TRUSTEES, &c., respondents,
*vs.*
HENRY VALLETTE, impleaded with THE LA CROSSE AND MIWAUKEE RAILROAD COMPANY, AND OTHERS, appellant.
} *On appeal.*

Know all men by these presents: That we, Henry Vallete, of Cincinnati, Ohio, and Moses Kneeland, of Milwaukee, Wisconsin, are held and firmly bound unto the above-named James T. Soutter, and Greene C. Bronson, trustees, &c., in the sum of five hundred dollars, to be paid to the said James T. Soutter and Greene C. Bronson, trustees, &c., their executors or administrators, or their successors in the trust. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this seventeenth day of January, A. D. 1862.

Whereas the above-named Henry Vallette hath prosecuted an appeal to the Supreme Court of the United States, to correct and reverse the final decree rendered in the above-entitled suit on the 13th day of January, A. D. 1862, by the district court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the above-named Henry Vallette shall prosecute his said appeal to effect, and answer all such costs as may be decreed or adjudged the *the* said respondents in said appeal, upon the affirmance of said final decree by the Supreme Court of the United States, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in presence of

HENRY VALLETTE.
MOSES KNEELAND.

DISTRICT OF WISCONSIN, *ss*:

Moses Kneeland, of said district, being duly sworn, says that he resides in the city and county of Milwaukee, in said district; that
608 he is a freeholder within said county, and that he is worth the sum of one thousand dollars over and above all debts and property by law exempt from execution.

MOSES KNEELAND.

Subscribed and sworn to this 17th day of January, 1862, before me.

EDWARD KURTZ,
*U. S. Com'r Dis't Wis.*

Jan'y 17, 1862. Approved:

A. G. MILLER, *Judge.*

January 22, 1862.—Receiver's report for month of December, 1861, filed.

February 25, 1862.—Receiver's report for month of January, 1862, filed.

March 22, 1862.—Receiver's report for month of February, 1862, filed.

March 25, 1862.—This day came the defendant Selah Chamberlain by his solicitors, and filed his prayer for an appeal to the Supreme Court of the United States.

*Prayer for appeal.*

The district court of the United States for the district of Wisconsin—
In equity.

GREENE C. BRONSON & JAMES T. SOUTTER, complainants,
*vs.*
SELAH CHAMBERLAIN, impleaded with THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others, defendants.

The above-named defendant, Selah Chamberlain, conceiving himself agrieved by the final decree entered on the —— day January, 1862, in the above entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

EMMONS, VAN DYKE & HAMILTON,
*Solicitors.*

March 24th, 1862.

Whereupon it is ordered by the judge that said appeal be, and hereby is, allowed, and that he enter into a bond, with surety to be approved by the judge, in the penalty of five hundred dollars conditioned for the payment of the costs of said appeal.

April 1, 1862.—This day came the defendant Selah Chamberlain and filed his bond for appeal in the penalty of one thousand dollars, with Daniel L. Wells and James Bonnell as sureties, which bond is approved by the judge, which is as follows:

609 *Bond of Chamberlain.*

Know all men by these presents that we, Selah Chamberlain, of Cleveland, in the State of Ohio, as principal, and Daniel L. Wells, and James Bonnell, of Milwaukee, Wisconsin, as sureties, are held and firmly bound unto Greene C. Bronson, James T. Soutter, in the sum of five hundred dollars, to be paid to the said Greene C. Bronson,

and James T. Soutter, their executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, or heirs, executors, and administrators, jointly and severally, firmly by these presents, dated this thirty-first day of March, in the year 1862.

Whereas the above bounden Selah Chamberlain has appealed to the Supreme Court of the United States from a decree of the district court of the United States for the district of Wisconsin, bearing date the —— day of January, 1862, in a cause wherein the said Greene C. Bronson and James T. Soutter are complainants, and the said Selah Chamberlain, the La Crosse & Milwaukee Railroad Company and others are defendants.

Now, therefore, the conditions of this obligation is such that if the above-named Selah Chamberlain shall prosecute his appeal with effect and pay all such costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise, to remain in force.

SELAH CHAMBERLAIN, [SEAL.]
By DAN'L L. WELLS, *his Att'y in fact.*
DAN'L L. WELLS. [SEAL.
JAMES BONNELL. [SEAL.]

Witness—
N. J. EMMONS.
W. H. STONEY.

April 1, 1862.—Approved:

A. G. MILLER, *Judge.*

610 COMPL'TS TESTIMONY.

*Minutes of company authorizing 2d mortgage.*

Special meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the company's office Saturday morning, August 8th, 1857, at which there were present Messrs. S. Brown, J. Hadley, Charles E. Jenkins, H. L. Palmer, M. M. Strong, G. Vliet, and Edwin H. Goodrich, vice-president. Absentees: D. D. Cameron, B Hopkins, H. McFarland, M. Kneeland, and B. Kilbourn.

*Resolved*, That the company, for the purpose of carrying forward its legitimate operations, will issue its bonds to the amount of one million of dollars, to be numbered from number one to number one thousand. All said bonds shall be expressed to be for money borrowed for the construction of their roads, and shall be payable to the bearer thereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic in the city of New York, with interest, at the rate of eight per cent. per annum, payable in the city of New York, semi-annually on the first day of March and the first day of September in each year on presentation and delivery of the interest warrants or coupons to be thereunto annexed. Said bonds shall be convertible into the capital stock of the company, estimating both the bonds and stock at par, at any time within five years from the date thereof. All of said bonds shall bear date on the first day of September, 1857, and be signed by the president and secretary, and have affixed to them the corporate seal of the company, and the said president and secretary are hereby authorized and directed, for and

in behalf of the company, to sign the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

*Resolved*, That for the better security of the payment of the aforesaid bonds, a deed of trust shall be executed, bearing date at such time as the same can conveniently be expected by the respective parties thereto, between the La Crosse and Milwaukee Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees, parties of the second part, which deed of trust shall be in the form following, to wit:

Deed of trust made this day of , in the year of our Lord eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees as hereinafter mentioned, parties of the second part.

Whereas said railroad company, for the purpose of constructing its roads, has determined to borrow a sum of money not exceeding
611 one million of dollars, and to issue not exceeding one thousand of its bonds for the repayment of the sums which may be borrowed, with interest thereon, which bonds will be numbered, respectively, from one to one thousand, both inclusive, and will be substantially in the following form, to wit:

UNITED STATES OF AMERICA,
*State of Wisconsin:*

No. . $1,000.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to the bearer hereof in the sum of one thousand dollars, for money borrowed for the construction of their roads, which sum they agree to pay to the bearer hereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic in the city of New York, with interest, at the rate of eight per cent. per annum, payable in the city of New York semi-annually on the first day of March and the first day of September in each year on presentation and delivery of the interest warrants or coupons hereto annexed.

The holder of this bond may at any time within five years from the date hereof convert the same into the capital stock of the company, estimating both the bond and the stock at par, on surrendering the bond with the unpaid coupons.

This is one of one thousand bonds, all of the same tenor, and numbered from 1 to 1,000, respectively, making in all one million of dollars, for securing the payment of which a trust deed has been executed by said company to Greene C. Bronson and James T. Soutter, of the city and State of New York, conveying to them (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also conveying to them the railroad of said com-

pany, (as well that part which has been constructed as that part which remains to be constructed,) from Watertown by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road—being the part between Watertown and Columbus—has been constructed and is now in full operation, together with the equipments and all other things pertaining, or which may hereafter pertain to the roads so conveyed, or either of them, reference to which deed is hereby had and made for a more full description of its contents.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by its president and secretary this first day of September in the year of our Lord 1857.

[SEAL.]

————————, *President.*

612 ————————, *Secretary.*

Registered and countersigned this ———— day of ———— 185 .

————————,

————————,

*Trustees.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this deed witnesseth that said railroad company, in consideration of the premises and the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation.

And also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road—being the part between Watertown and Columbus—has been constructed and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute, or be a part of or appertain to said railroads, or either of them.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements now appertaining to said railroads or either of them, whether now built or made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already

been or may hereafter be procured for or used on said railroads or either of them, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads or either of them.

And also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, aforesaid. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal,
613 of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped.

Said railroad from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to a second mortgage of one hundred and fourteen thousand dollars, and the next forty miles of said road westward of the eighteen miles is subject to a second mortgage of two hundred thousand dollars.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid mortgages, to the said parties of the second part, and the survivor and successor of them, and their and his heirs and assigns forever as joint tenants, and not as tenants in common; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed:

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof, to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustees are hereby authorized in their discretion, either in person or by their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and

profits thereof, and to sell all and singular said railroads and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, either at public or private sale, and to execute and deliver to the purchaser or purchasers, deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and
614 interest, whether legal or equitable, of said trustees and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before every sale shall be made at auction, notice of such intended sale shall be published once in each week for twelve weeks, at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and in case the interest in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds or any of them at maturity, then, and in either of said cases, said trustees, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, shall proceed to make such sales and conveyances as are above mentioned.

Third. Said railroad company covenants and agrees to and with said trustees, and the survivor and successor of them, that said company will, from time to time during the continuances of the trust, make, execute, cause to be duly recorded and delivered to said trustees all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this deed to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustees assume no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing except as is herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustees, and when all of said bond shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal monies shall fall due as to all such bonds as shall not then have been presented for payment, and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their right, title, and interest of, in, and to the trust property.

615 Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensations of the trustees in, about, or for the execution of the trust, and will, in all things, keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they may sustain, or be put to, in consequence of accepting the trust or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustees.

Seventh. The trustees are hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as they may deem proper in the execution of the trust, and shall not be answerable for the default or other misconduct of such attorneys, counsellors, or other agents, unless chargable with culpable negligence in their selection. Nor shall the trustees be responsible for anything short of gross negligence or wilful default in the discharge of any of their duties. Nor shall either of the trustees be answerable for the act, omissions or defaults of his associate.

Eighth. All moneys which may be received by the trustees under the trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustees and their compensation for executing the trust, shall be applied to the payment of the bonds, which may be issued under the trust; and the surplus, if any, shall be paid to said railroad company.

Ninth. The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associate, or of the railroad company, reasonable notice being first given to said trustee.

Either of the trustees may resign his trust and be thenceforward discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company, and the other trustee, shall be approved by said supreme court, and on the death, removal or resignation of a trustee, said supreme court, on reasonable notice to the other trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all right, title, interest and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee and had executed this deed.

Tenth. Said trustees hereby accept and covenant and agree to and with said railroad company faithfully to execute said trusts.

In witness whereof, said rail company has hereto affixed its corporate seal and caused the same to be subscribed by its president and secretary, and the trustees have subscribed their names and affixed their seals the day and year first above written.

——— ———, *President of the railroad company.*

——— ———, *Secretary of the railroad company.*

——— ———, *Trustees.*

616 Which said deed of trust shall be executed in duplicate on the part of this company, party of the first part, by having thereto affixed its corporate seal, and by being subscribed by the president and secretary, and the said president and secretary are

hereby authorized and directed for and in behalf of the company to subscribe the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same. And when said deed of trust shall also be duly executed by the said trustees, parties of the second part, the company will cause the same to be duly recorded without unnecessary delay in such places and manner as the laws of this State may require, for the purpose of making the same a complete and perfect security in favor of the trustees and the persons who may become holders of the bonds.

*Resolved*, That the president of this company be, and hereby is, authorized to sell or dispose of all or any portion of an issue of one thousand bonds of this company of one thousand dollars each, amounting to one million of dollars, to bear date September 1st, 1857, payable September 1st, 1870, at the Bank of the Republic in the city of New York, bearing interest, at the rate of eight per cent. per annum, payable on the first days of March and September in each year, which are issued under and secured by a deed of trust of this company to Greene C. Bronson and James T. Soutter; the execution of which bonds and deed of trust is authorized by resolutions of the board of directors, adopted this 8th day of August, 1857. And the said president is authorized to sell the said bonds, or any of them, at the rate of eighty per cent. of their amount, payable half in cash and half in the stock of the company, at par, or upon such other terms as he may deem proper.

*Resolved*, That a copy of these resolutions, duly certified under the seal of this company, be delivered to the trustees in said deed of trust.

I, Hans Crocker, do hereby certify, that as receiver of the La Crosse and Milwaukee Railroad Company I have exclusive control and possession of the books belonging to said company; that I have caused the foregoing copy to be made, and have compared it with the original now remaining of record in the book of minutes of the said corporation, and that the same is a true copy of said resolutions, and of the whole of them.

H. CROCKER,
*Receiver of the La Crosse and Milwaukee Railroad.*

UNITED STATES OF AMERICA,
*District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office, being an exemplification of the record and proceedings in the suit of Greene C. Bronson and James T. Soutter, trustees, against the La Crosse and Milwaukee Railroad Company and others.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in [SEAL.] said district of Wisconsin, this ninth day of April, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

J. M. MILLER, *Clerk.*

Judge Davis

# SUPREME COURT OF UNITED STATES.

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| No. 132<br>GREENE C. BRONSON and JAMES T. SOUTTER,<br>*Trustees, &c.,*<br>*vs.*<br>THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, *and others.* | No.....<br>THE MILWAUKEE & MINNESOTA R. R. CO., Impl., &c.,<br>*vs.*<br>JAMES T. SOUTTER, Survivor of GREENE C. BRONSON. |

*MOTION TO PERFECT RECORD.*

MAT. H. CARPENTER,

*for the Motion.*

603

# SUPREME COURT OF THE UNITED STATES. [1]

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| No. 132.<br>GREENE C. BRONSON and JAMES T. SOUTTER,<br>*Trustees, &c.,*<br>*vs.*<br>THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, *and others.* | No.....<br>THE MILWAUKEE & MINNESOTA R. R. CO., Impl., &c.,<br>*vs.*<br>JAMES T. SOUTTER, Survivor of GREENE C. BRONSON. [2] |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

*To Thomas L. Ogden, Solicitor for said Complainants, and said Soutter, Survivor.*

*To Hon. Thomas Ewing and Hon. J. M. Carlisle, of Counsel for said Complainants, and of Counsel for said Soutter, Survivor.* [3]

Please take notice, that on the opening of the said Supreme Court, at the capital in the City of Washington, on Friday morning, December 25, A. D. 1863, or as soon thereafter as counsel can be heard, a motion will be made by the Milwaukee and Minnesota Railroad Company, founded on the affidavits of Mat. H. Carpenter and John M. Miller, Esq., and a transcript of record, copies of which are hereto attached, for an order directing the record in this cause to be perfected by filing said certified transcript from the records of the District Court of the United States [4]

for the District of Wisconsin, showing the proceedings in said Court in this cause in regard to the Cross Bill of the Milwaukee and Minnesota Railroad Company, filed and exhibited therein, being a copy of said Cross Bill, subpœna thereon, order for service of subpœna, service and demurrer thereto, and motion in this cause to dismiss said Cross Bill and the order of said District Court dismissing the same; all duly certified by said John
5 M. Miller, Clerk of said District Court, under the seal of said Court; or that said motion may be regarded as a suggestion of dimunition of the record in this cause, and that a certiorari may be issued according to the course and practice of said Court, to the Clerk of said District Court, commanding him to make forthwith return of transcript of record of said District Court; showing all the proceedings in this cause in said Court in regard to said Cross Bill, or that the party moving may have such other and further relief in the premises as it may be entitled to, and will
6 ever pray, &c.

Dated December 11th, A. D. 1863.

MAT. H. CARPENTER,
Sol. and Counsel for Mil. & Minn. R. R. Co.

## SUPREME COURT OF THE UNITED STATES.

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| No. 132. | |
| Greene C. Bronson and James T. Soutter, *Trustees*, | No..... |
| 7 *vs.* | The Milwaukee & Minnesota Railroad Company, Impl. &c. |
| The La Crosse & Milwaukee Railroad Co., *and others.* | *vs.* |
| *Defts.* | James T. Soutter, Survivor of Greene C. Bronson. |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN—IN EQUITY.

DISTRICT OF WISCONSIN—ss.

Mat. H. Carpenter being first duly sworn, on oath says, that he
8 is the Solicitor of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above entitled cause. That

while this cause was pending in the District Court of the United States for the District of Wisconsin, he applied to said Court as solicitor for Alexander Fleming, a stockholder of said Milwaukee and Minnesota Railroad Company, by written petition for leave to put in an answer for said Milwaukee and Minnesota Railroad Company in this cause, and that said Company might have time, at least thirty days, to perfect the same, and prepare a Cross Bill as should be necessary. And on the same day, Aug. 16, 1860, 9
the said District Court wherein this cause was then pending, made an order in said cause upon said petition, as follows:

"And the said petition having been argued by counsel, it is "thereupon ordered by the Court, that the said A. Fleming have "leave to put in an answer in the name of the Milwaukee and "Minnesota Railroad Company within twenty days."

That afterwards, on the first day of September, or about that time, this affiant as solicitor as aforesaid, filed the answer of the said Milwaukee and Minnesota Railroad Company, and also ex- 10
hibited the Cross Bill of said last named Company.

That thereupon the said Court made an order that subpœna should issue upon said Cross Bill, and that the same should be served on Thomas L. Ogden, the solicitor of the complainants in this cause—the defendants to said Cross Bill; and thereupon subpœna issued, and was served according to said order on the 13th day of September, 1860.

That on the 7th day of November, 1860, the said Thomas L. Ogden, solicitor for the complainants, moved the Court in this cause, that the order directing the service of the subpoenæ upon 11
the Cross-Bill filed in the name of the Milwaukee & Minnesota Railroad Company, upon the solicitor of the complainants be vacated, and that the Cross-Bill be set aside and removed from the files; and on the same day the said Ogden, solicitor as aforesaid, filed a demurrer to the said Cross-Bill for the said complainants; with an under-writing thereto as follows: "This demurrer "is filed subject to the order of the Court on the motion made "by the complainants in the original bill to set aside said Cross- "Bill, and vacate the order for the service of the subpœna.

THOS. L. OGDEN, 12
Solicitor for Defendants."

That on the 8th day of December, 1860, it was ordered by the Court that the said Cross-Bill be and the same was stricken off.

From the final Decree in this cause, an Appeal was first taken by the said complainants January 17th, 1862.

That the Milwaukee & Minnesota Railroad Company appealed from the final decree in this cause on the 14th day of September, A. D. 1863, since the last term of this Court. That at the time
13 said Milwaukee & Minnesota Railroad Company took its appeal, this affiant verily believing that all the proceedings in said District Court in regard to said Cross-Bill had been returned, as a part of the record, to this Court, this affiant directed John M. Miller, Esq., Clerk of said District Court, to make out and return to this Court a full transcript of all proceedings in said cause, subsequent to that already certified and returned by him to this Court; and that said Clerk following said direction of this affiant, did as this affiant is informed and believe, make and
14 certify such transcript; and sent the same to the Clerk of this Court by Express from Milwaukee, Wisconsin, on the 6th day of November A. D. 1863; and this affiant verily believed that said transcript so returned by said Clerk made, with that before certified to this Court and printed, a complete record in said cause up to the day when the same was so sent by said Clerk to the Clerk of this Court.

But this affiant says, that since that time, and within a very few days, on examining the printed record in this cause, for the purpose of preparing a brief for the argument of this cause at
15 this term of said Court, this affiant has first learned that the record in this cause as certified to this Court on the appeal taken by said complainants, and which has been printed does not contain said Cross-Bill, subpœna, order for service, demurrer or order dismissing said Cross-Bill. That the petition of the said Fleming for leave to answer and file said Cross-Bill, is printed in said record on and after page 64; that the order for leave to said Fleming to answer is printed on page 73; that the entry of record of motion to dismiss said Cross-Bill is printed on page 111; but that said record does not contain said Cross-Bill, sub-
16 pœna and proceedings thereon; all of which as this affiant believes are a necessary part of the record to be returned to this

Court on the appeal of the Milwaukee & Minnesota Railroad Company in this cause; and that without the same being made a part of the said record, the rights of the said last named Company cannot be fully adjudicated by this Court.

This affiant further says that immediately after discovering the said defect in the said record, after the 6th day of November, A. D. 1863, he applied to John M. Miller, Esq., Clerk of the said District Court, and obtained what purports to be, and this affiant 17
believes it is, a true copy and transcript of the records of said District Court in relation to said Cross Bill, subpœna, order for service, service, demurrer, motion to dismiss, and order dismissing said Cross Bill; all of which duly certified by said Clerk under the seal of said District Court this affiant brings into this Court and deposits with the Clerk of this Court herewith; and which this affiant believes will, if the same shall be taken and considered a part of the record in this cause, make a true and perfect record of the proceedings in said cause in said District Court.

18

MAT. H. CARPENRER.

U. S. REV. STAMP. Subscribed and sworn to before me this eleventh day of December, A. D. 1863.

JOHN M. MILLER,

[SEAL.] Clerk Dist. Court U. S., Wisconsin.

## SUPREME COURT OF THE UNITED STATES.

19

| No. 132. | No..... |
|---|---|
| Greene C. Bronson and James T. Soutter, *Trustees*, | The Milwaukee & Minnesota Railroad Company, Impl. &c. |
| *vs.* | *vs.* |
| The La Crosse & Milwaukee Railroad Co., *and others*. *Defts.* | James T. Soutter, Survivor of Greene C. Bronson. |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN—IN EQUITY.

DISTRICT OF WISCONSIN—ss.

John M. Miller, being first duly sworn, on oath says, that he is 20
the Clerk of the District Court of the United States for the Dis-

taict of Wisconsin ; that at the time the Milwaukee and Minnesota Railroad Company, one of the defendants in the above entitled cause, took its appeal to the Supreme Court, Mat. H. Carpenter directed me to make a complete transcript and copy of all proceedings in said cause in said District Court, and the Circuit Court of the United States for said District subsequent to that before that time certified by me to the Supreme Court on the
21 appeal of the complainants; and that I soon thereafter made such return to the Supreme Court, and sent the same to the Clerk of the Supreme Court, by express from Milwaukee, November 6th, A. D. 1863. This affiant further states that he has since, upon the application of Mat. H. Carpenter, solicitor of said Milwaukee and Minnesota Railroad Company, made out and delivered to said Carpenter, properly certified under the seal of said District Court, a true transcript of all proceedings in this cause in the said District Court in regard to the Cross Bill filed by the said Milwaukee and Minnesota Railroad Company, September 3d, A.
22 D. 1860.

J. M. MILLER,

U. S. REV. STAMP. Subscribed and sworn to before me this 11th day of December, A. D. 1863.

EDWARD KURTZ,
U. S. Com'r, Dist. Wis.

I hereby certify that Edward Kurtz, Esq., is a Commissioner of
23 the Circuit and District Courts of the United States for the District of Wisconsin.

Witness my hand and the seal of the District Court of the United States for the District of Wisconsin, this 11th day of December, A. D. 1863.

[SEAL.]

U. S. REV. STAMP.

J. M. MILLER,
Clerk.

24

## COPY OF RECORD, REFERRED TO IN THE FOREGOING AFFIDAVITS, AND OFFERED TO BECOME PART OF THE RECORD.

*District Court of the United States of America, for the District of Wisconsin.*

UNITED STATES OF AMERICA, } ss.
District of Wisconsin. } 25

At a special term of the District Court of the United States of America, for the District of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said District of Wisconsin, on the first Monday, (being the first day) of October, A. D. 1860.

*Present.*—The Hon. Andrew G. Miller, Judge of said Court, presiding.
John H. Lewis, Marshall, John M. Miller, Clerk. 26

Among other the following proceedings were had, to-wit:

THE MILWAUKEE & MINNESOTA RAILROAD COMPANY, *Complainant.*
*against* } IN EQUITY.
GREENE C. BRONSON and JAMES T. SOUTTER, *Defendants.*

Be it remembered that heretofore, to-wit: on the 3d day of 27 September, A. D. 1860, came the above named complainant by its Solicitors, Messrs. Carpenter & Gridley, and filed its Cross-Bill of Complaint against the above named defendants, as follows:

*To the Judge of the District Court of the United States for the District of Wisconsin.*—IN EQUITY:

Your orator, the Milwaukee & Minnesota Railroad Company, a corporation created and organized under and in pursuance of 28 the laws of the State of Wisconsin, brings this its Cross-Bill

against Greene C. Bronson and James T. Soutter, of the city and State of New York, and citizens of the said State of New York, and thereupon your orator complains and says:—

That previous to the 1st day of September, A. D. 1857, the La Crosse and Milwaukee Railroad Company was, ever since has been and now is, a corporation created by and organized under and by virtue of the laws of said State; that on the 1st day of
29 September A. D. 1857, its affairs were conducted and managed by a Board of Directors, and that said Board of Directors then well knew what your orator shows was the fact, that is, that said last named Company was greatly embarrassed, and that its stock and securities were of little or no value; and your orator further shows that the Board of Directors of said last named Company, intending and designing to injure, cheat and defraud the said last named Company, and its stockholders and creditors did, on or about the 1st day of September, A. D. 1857, pretend to make out and execute one thousand of the bonds of said Company, in
20 and by each of which said bonds the said last named Company acknowledged itself indebted to the bearer thereof in the sum of one thousand dollars for money borrowed for the construction of its Road, and which sum it agreed therein to pay to the bearer thereof on the first day of September, 1870, at the Bank of the Republic in the city of New York, with interest at the rate of eight per centum per annum, payable in the city of New York semi-annually on the first day of March and September in each year, on presentation and delivery of the interest warrants or
31 coupons thereto annexed, which said coupons were by their terms payable at said Bank of the Republic, and all of said bonds were of same tenor, and numbered respectively from one to one thousand inclusive, making in all one million of dollars, and were all dated September 1st, A. D. 1857. But your orator shows to the Court that when said bonds were thus made out and executed, it was the fraudulent intention of said Board of Directors to give away and squander said bonds or a large part thereof to the Officers and Directors of said Company and their friends and confederates and others, or exchange the same with such officers
32 or their friends for the stock of said company which was nearly or quite worthless, or for the worthless unsecured bonds of said

company; and that said bonds were all made out and execu ted in form for delivery and sale, and intended to be sold and delivered and given away by said Board; and that when said bonds were so made out they did not represent nor secure any then existing indebtedness of said company, nor did said company then owe said million of dollars represented by said bonds and mentioned therein and nominally secured thereby, nor any part thereof, as the Directors of said company then well know; and that said Board of Directors further to consummate their fraudulent intent and purpose as aforesaid, pretended to and in form did cause a mortgage or trust deed to be made out and signed, sealed, executed and acknowledged, so as to be entitled to registration and in form to be valid and binding against said company, wherein and whereby said company in name and form conveyed to the said defendants as trustees in trust and mortgage to secure the payment of the sum mentioned in, and pretended to be secured by said bonds and interest thereon, all and singular the Rail Road of said company, commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road had then been constructed and was in full operation, and also the Railroad of the said company (as well that part that had then been constructed) as that part which remained to be constructed from Watertown by way of Columbus to Midland, where it connects with the main line of the Railroad of said Company, a distance of forty miles; one-half of which last mentioned road, being the part between Watertown and Columbus, had been constructed and was then in full operation, including all and singular the several tracts, pieces or parcels of land which then were or might thereafter be, or constitute the site of the roadway, turn-outs, engine-houses, work-shops, depots and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be part of or appertain to the said Railroad, or either of them; and also all and singular the superstructure of said Railroad, whether then made or to be made thereafter, and all the engine-houses, work-shops, depots and other buildings, and all the other improvements on or appertaining to said Railroad or either of them, whether then built or made or to be built and made thereafter; and also

all and singular the locomotive engines and other rolling stock and all the other equipments of every kind and description, which had already been or might thereafter be procured for or used on said Railroad or either of them; and all the materials, tools, implements and utensils and other personal property which had been or might thereafter be procured for or used in connection with the said Railroads or either of them; and also, all and
37 singular the rights, liberties, privileges and franchises of said Railroad Company, so far as they relate to said Railroad from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland aforesaid; and it was thereby declared to be the intention of the parties to the said trust deed or mortgage to convey to and vest in said defendants all the property real and personal of the said Railroad Company, to be acquired thereafter as well as that which had already been acquired, together with all the rights, liberties, privileges and franchises of said Railroad Company in respect to said Railroad from Milwaukee to Portage
38 City, and from Watertown by way of Columbus to Midland, as fully and amply as the same might be conveyed if said railroad had then been fully constructed and equipped; but said Railroad from Milwaukee to Portage City was by the said mortgage declared to be subject to a first mortgage on the same, of ten thousand dollars a mile, amounting in the aggregate to nine hundred and fifty thousand dollars; and the first eighteen miles of said road from Milwaukee westward was declared to be subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles of said road westward of the said
39 eighteen miles, was declared to be subject to a second mortgage of two hundred thousand dollars.

And your orator further shows to the Court that after the execution of said bonds and after the execution and delivery of said mortgage or trust deed to said Bronson and said Soutter, the said Bronson and said Soutter caused said mortgage or trust deed to be duly recorded in the office of the Secretary of State of the State of Wisconsin, according to the laws of the State of Wisconsin in that behalf, and that said mortgage or trust deed appear
40 to be, and in form and of record is an incumbrance and lien upon the property and franchises and things therein described, to the

full amount of one million dollars and interest thereon; that after the execution, delivery and recording of said trust deed as aforesaid, the directors and officers of said last named Company, in fraud of the rights and interests of said Company, and in fraud of the rights and claims of its stockholders and creditors, began to squander and dispose of said bonds, and that two hundred of said bonds being those numbered from 651 to 825 inclusive, and from 851 to 875 inclusive were given and delivered by 41
some of the officers of said Company to one Selah Chamberlain, in pretended payment or satisfaction of a claim of said Chamberlain for services rendered to said Company, or for damages sustained by him for the discontinuance, breaking up or surrender of a contract or contracts between him and the said Company, which claim was wholly unfounded as a valid claim against said Company and was greatly over-estimated, for the fraudulent purpose of enabling him to take and hold said bonds; and your orator insists that said two hundred bonds ought to be surrendered and cancelled; that one hundred of said bonds were given to 42
Seth R. Foster of the City of New York as a security for a pretended indebtedness to him on the part of said Company, but that in truth and in fact said Company was not indebted to said Foster on a fair settlement of accounts in any sum whatever, but said Foster was largely indebted to said Company, and the same was well known to the president and other officers of said Company, when said bonds were delivered to him, and that said bonds were so delivered and given to him fraudulently, without any good or valuable consideration therefor, and your orator in- 43
sists that the same ought to be surrendered and cancelled; that the said James T. Soutter, one of the said defendants, has and holds, or claims to control fifty-five of said bonds, which he obtained as follows: That when said bonds were prepared and executed on the part of the said La Crosse & Milwaukee Railroad Company, they were delivered to said trustees defendants, to be signed by them, and that said James T. Soutter retained of said bonds said fifty-five bonds and refused to deliver the same over to the said Company, and that he did this without any right or authority whatever, but that said Soutter pretended that said 44
Company owed him certain sums of money specified in worthless

unsecured and illegal bonds, which said bonds said Soutter pretended then and there to pass back to said Company, and that said Soutter gave and paid no value whatever for said fifty-five bonds; but that said Soutter fraudulently pretends that said fifty-five bonds are legal and valid bonds and secured by said mortgage to the said defendants as trustees aforesaid; that fifteen of the said bonds were delivered to the defendant Greene C. Bronson, in ex-
45 change for the stock of said Company, and were pretended to have been sold to him for the stock of said Company, which stock was at the time said bonds were delivered to said Bronson, nearly or wholly worthless, as the said Bronson then well knew; and your orator insists that neither the said Company, nor its directors, officers or agents, had any authority, power or right whatever to purchase from said Bronson said stock for or on behalf of said Company, and pay therefor with the money or property or lands of the said Company, and that said pretended sale of said fifteen
46 bonds to said Bronson was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled; that about six hundred of said bonds were sold and disposed of by the officers of said Company at the nominal price of eighty cents on the dollar, as follows; forty cents on the dollar of the amount specified in the said bonds respectively was paid in money, and forty cents on the dollar of said amount in the bonds of said Company known as "Barstow Bonds," or the said bonds known as "Corruption Bonds," or in the stock of said Company, and that the said Company received for said six hundred bonds only about one
47 hundred and and ninety thousand dollars in cash, and that it received in said bonds known as "Barstow Bonds" or "Corruption Bonds," and mostly in said "Barstow Bonds," so called, about one hundred thousand dollars, and the remainder to make up the said eighty cents on the dollar in the stock of said Company; and that said "Corruption Bonds" and said "Barstow Bonds," and said stock were then of no value or a mere nominal value, and your orator insists that neither the said Company nor its directors, officers or agents had any authority, power or right to sell said bonds and receive the depreciated capital stock of said
48 Company in part payment therefor, and that all of said six hundred bonds, disposed of aforesaid, are fraudulent and void, and ought to be surrendered and cancelled.

And your orator further shows unto your Honor, and on information and belief charges and avers the fact to be that the aforesaid several parcels of said bonds so as aforesaid, issued, transferred, sold, given away or delivered, were so fraudulently issued, transferred, sold, given away or delivered by the board of Directors, or by the officers or agents of said Company, without lawful right or authority to bind the Company in that respect, and that the said bonds are wholly void in whosoever hands they may be, and said Company is not bound in law to pay the same or the interest accrued thereon. 49

And your orator further shows unto your Honor, and on information and belief charges and avers the fact to be, that one Prentis Dow, who pretends that he is interested in this foreclosure suit of the mortgage to the said defendants as trustees aforesaid, and is the agent of the said defendants in the conducting of said foreclosure suit, and that said Dow, while agent of said Company, took fourteen of said bonds for which said Company received less than one thousand dollars in money, and that said bonds are void and ought to be cancelled. 50

Your orator further shows that said Greene C. Bronson and the said James T. Soutter, exhibited their bill of complaint in the District Court of Wisconsin, in equity, against the said La Crosse and Milwaukee Railroad Company, your orator and others, on the ninth day of December, A. D. 1859, in which said bill of complaint, among other things, said Bronson and Soutter state annd show to the Court here, the execution of said bonds and said mortgage as hereinbefore set forth, and the delivery and registation of said mortgage as hereinbefore set forth, and among other things the said Bronson and Soutter in said bill of complaint aver and allege "that all of the said bonds were duly registered and countersigned by them as trustees, and delivered to said Company, and that the same have been sold, transferred and delivered by said Company to divers persons, and that the same were at the time of the exhibiting of said bill held and owned as existing claims and set forth at length the terms, conditions, provisions and covenants in said mortgage or deed of trust conveyed, and that the said La Crosse and Milwaukee Railroad Company had failed to comply with its covenent and agree- 51 52

ment as contained in said several bonds, by omitting to pay the interest on the said bonds respectively which fell due and payable on the 1st day of September, A. D. 1859, and the first day of March, A. D. 1860, amounting upon all said bonds to the sum of eighty thousand dollars, and the interest upon one-half of said sum, from the 1st day of September, and the interest upon one-half of said sum from the 1st day of March, A. D. 1860, and
53 that said interest remained and was then due and payable, and that said Company did not have or provide at the Bank of the Republic, in New York, at any time before the exhibiting of said bill of complaint, any sum of money for the payment of said interest, and that the payment of said interest had been duly demanded at the said Bank of the Republic, since the same became due and payable, and that payment thereof was refused, that all of said bonds were made payable to bearer and were negotiable by delivery, and that many of them were then held by various
54 parties and known to said Bronson and said Soutter, and that many of said bondholders, holding in the aggregate six hundred bonds, had requested said Bronson and said Soutter to proceed to enforce the lien of the said trust deed or mortgage, and to take such proceedings at law or in equity as to the said Bronson or Soutter might seem best to make said security available, that said bondholders were principally non-residents of said State of Wisconsin, and that said bill of complaint was filed in the name of said Bronson and Soutter, but for the benefit and security of all said bondholders, and that the number of said bond-
55 holders was so great that they could not, without manifest inconvenience and oppressive delays in said suit, be all brought before said Court.

And that said Bronson and said Soutter fully represented in said suit the interest of all said bondholders, and that your orator and other defendants named, in said bill of complaint, claimed some interest in the premises described in said trust deed as subsequent purchasers or encumbrancers or otherwise, and the said Bronson and said Soutter in said bill of complaint prayed the Court among other things, that the said La Crosse and Milwau-
56 kee Railroad Company, might be adjudged to said Bronson and said Soutter as trustees for the benefit of said bondholders, the

arrears of interest before mentioned and then due or thereafter to become due or payable thereon, together with costs of said suit, and that in default thereof, that said last named Company and all persons named as defendants to said bill and all persons claiming, or to claim under them or either of them, or otherwise might be forever barred and foreclosed of and from all equity of redemption, and claim of, in and to said mortgaged premises, and those included in said trust deed and every part thereof, with all 57
and every the appurtenances, and that they might be adjudged and decreed to deliver over to said Bronson and Soutter or their attorney, or agent, the possession of the said Railroad, and all its appurtenances, and all its books, title, deeds and writings in relation to the same and that all income of the said road might be applied to the payment of said moneys due and to become due; and that all and singular the said property mentioned and intended so to be in the said mortgage or trust deed might be sold under, and according to the decree of said Court, and that out of 58
the money arising from the sale thereof, said Bronson and said Soutter might be paid all the principal and interest due or to become due upon the said bonds and all the interest which wa then due, and might become due thereon, together with all costs and charges by them in that behalf sustained or entitled to; and that said La Crosse and Milwaukee Railroad Company might be adjudged to pay any deficiency after applying all of said money so applicable thereto, and that said Bronson and said Soutter might have such further or other relief, order or decree or both in the premises as should be just and equitable; and that in the 59
mean time said Bronson and said Soutter their agents or attorneys might have authority to take possession of the said Railroad and its appurtenances, and secure all the income thereof, or that a receiver might be appointed according to the course and practice of said Court, and with the usual powers of receivers in like cases of said roads, and their appurtenances, receipts and earnings, and that untill the final decree in said suit, said La Crosse and Milwaukee Rail Road Company, its attorneys counsellors officers agents, trustees, treasures and all persons acting under them or either of them might be restrained by an injunction is- 60
sued out of said Court from using any of the engines, cars or any

of the property included in said mortgage or deed of trust for any purpose whatever.

And your orator further shows unto your Honor, that the La Crosse & Milwaukee Railroad Company is a corporation created by and existing under the laws of the State of Wisconsin, and that its business and affairs are managed and controlled by a
61 Board of Directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the Railroad or other property of said company; and that a large number of farmers along the line of said company's said railroads had before then loaned their credit in form of bonds and mortgages, to aid said company in the construction and equipment of said railroad, which bonds and mortgage had been before then used by the said company with a stipula-
62 tion on its part with and to said farmers to pay the interest that might accrue thereon, and large sums of said interest which said company was bound to pay as aforesaid had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payments of such interest; and that the said company for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did on or about the day and year last aforesaid, make, sign, seal, execute and perfect ready to be negotiated,
63 sold, delivered and transferred in payment of said indebtedness of said company and in payment of said interest and to be used in and about the necessary and proper business of said company one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and payable in A. D. 1888, with interest at seven per cent. payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attach-
64 ed; and that to secure the payment of said bonds and thereby enable said company to use said bonds for the purposes aforesaid, the said company did on the said 21st day of June, A. D.

621

1858, make, execute, sign, acknowledge and perfect its mortgage or deed of trust in due form of law to William Barnes, to secure the payment of said last named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid: "All and singular the Railroad of said company commencing in the city of Milwaukee and running from thence to La Crosse, a dis- 65
tance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction including all and singular the several tracts, pieces or parcels of lands which then were or thereafter might be or constitute the site of the roadways, turn-outs, engine-houses, work-shops, depots and other buildings, and all the other land and real estate which then constituted or might thereafter constitute, or be a part of or appertain to said Rail-road; and also all and singular the super-structure of said Rail-road, whether then made or to be made thereafter, and all the 66
engine-houses, work-shops, depots and other buildings, and all the other improvements on or appertaining to said Railroad, whether then made or built, or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and descrip-tion which had then been or might thereafter be procured for or used on said Railroad, and all the materials, tools, implements, utensils and other personal property which had then been or might thereafter be procured for or used in connection with such 67
Railroad. And also all and singular the rights, liberties, privi-leges and franchises of said Railroad to La Crosse, together with other property and things in said mortgage described; and that about the said twenty-first day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, and was by said trustee thereafter caused to be duly and legally recorded in the Office of the Secretary of State of the State of Wisconsin, and in the Offices of the Reg-isters of Deeds in the several Counties through which said Rail-road passes, and was then located. 68

That on the 11th day of August, A. D. 1858, the said Company made, signed, sealed and delivered to said Barnes, trustee, a certain indenture of supplementary mortgage or deed of trust in and by which said Company recited and affirmed the terms and conditions of said mortgage or deed of trust herein set forth and dated June 21st; 1858; and did convey to said Barnes, as
69 trustee as aforesaid, in mortgage as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: "All and singular the rights, privileges, liberties and franchises of said Company of every kind and description, and also all lands granted or intended to be granted to said Company under and by virtue of the act of Congress and the act of the Legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and all the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate therein conveyed or intended to be conveyed, and also all
70 and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatever nature, which might be owned or in which said Company might have an interest on such day as such Company might first make default in the payment of the interest or principal or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said Company to secure which said mortgage was given.

That immediately thereafter the said Barnes caused said sup-
71 plementary mortgage to be recorded as and in the same offices as the said first named deed of trust or mortgage to said Barnes was recorded, as hereinbefore set forth, a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed or trust to said Barnes is attached to your orator's answer to the bill of complaint on file in the office of of the Clerk of this Court, wherein said Bronson and said Soutter are complainants and hereinafter mentioned, and said deeds are marked respectively schedule "A" and schedule "B," as by reference thereto, and to which your orator prays leave to refer,
72 will more fully and at large appear, and your orator prays may

be taken and considered as a part of your orator's bill of complaint.

And your orator further shows unto your Honor that immediately after said Company commenced to deliver the said last named bonds so secured as aforesaid, in the payment of the indebtedness of said Company, and for the other purposes contemplated by said Company in the issue thereof, and in the necessary and proper business of said Company ; and that all of said bonds were sold and delivered in payment and transferred by said Company for the purpose and in the manner contemplated by said Company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said Company for materials furnished to and services rendered for said Company. And that large numbers of said bonds are now held by such persons in the said State as your orator is informed and believes. And that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the City of New York.

That about the 1st of February, A. D. 1859, the said Company having made default in the payment of a part of the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the said State of Wisconsin then in force in that behalf, proceeded to the foreclosure of said mortgage by advertisement, and having given the notice required by law, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction in the City and County of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action and other things in siad mortgage and supplementary mortgage to him, said Barnes, described ; and became the purchaser thereof according to the provisions of the said State of Wisconsin then in force in that behalf, at and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents ($1,593,333 33,) no other person or body having made any bid whatever for the same ; and that said mortgage

thus became and was thereby foreclosed according to the provisions of the laws of said State of Wisconsin in that behalf then in force. And that said Barnes, by virtue of said purchase and the provisions of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises so purchased by him, and thereafter held the same in
77 trust and only in trust for the holders of the outstanding bonds secured by said mortgage.

And that afterwards, to-wit: on or about the twenty-fourth day of May A. D. 1859, the owners and holders of the said bonds proceeded to organize anew, and then and there elected Directors and took the corporate name "Milwaukee and Minnesota Railroad Company," and thereafter proceeded and conducted their business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby become, and since has continued as your orator is informed and believes
78 a corporation under and by virtue of the laws of said State capable of sueing and being sued; and that said Milwaukee and Minnesota Rail Road Company immediately entered into the possession of said propriety and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in the possession of said La Crosse and Milwaukee Railroad Company at the time of said sale, and said organization of said new Company.

And your orator further shows to your Honor, that he is in-
79 formed and believes, and thereupon states to the Court that said bondholders at said new organization elected and chose the following named persons directors of said Milwaukee and Minnesota Rail Road Company, viz: Russel Sage, N. J. Emmons, William E. Smith, W. B. Gilbert, Hans Crocker, —— Battershall, William Gould, S. R. Hill and Lemuel W. Weeks, and that said directors immediately thereafter organized the said board of Directors by electing and choosing Russell Sage, President, and Dwight W. Keyes Secretary.

80 And your orator further shows unto your Honor, and states upon information and belief that by virtue of the said foreclosure

of said deeds of trust or mortgages to said Barnes as herein before set forth, and the organization of said Milwaukee and Minnesota Rail Road Company as herein before set forth that the said Milwaukee and Minnesota Rail Road Company became under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Rail Road Company and the owner of, and clothed with all the rights, privileges, franchises 81
and property, real and personal, and things in action and effects of every nature and description wherever situated and however circumstaned, subject only to such valid and legal liens and emcumbrances, thereon as were prior to said first deed to said Barnes, and that the said Milwaukee and Minnesota Railroad Company as the creditor of the said La Crosse and Milwaukee Rail Road Company, has a right to object to, resist and set aside any and all conveyances, negotiations, sales, transfers, leases and mortgages which were made by said La Crosse and Milwaukee Rail 82
Road Company with intent to hinder, delay or defraud its creditors and has the right to object to and resist every claim of every person and all persons against said La Crosse and Milwaukee Rail Road Company, which is or can be deemed a lien or encumbrance upon any of the property, rights, privileges, or franchises of said last named Company, which were embraced and described in either of the said Trust deeds to said Barnes and now owned by your orator.

And your orator prays and claims a full and complete discovery of and from the said defendants, (who represent all the hold- 83
ers and pretended owners of the said bonds, pretended to be secured in or by the said mortgage or trust deed to said Bronson and said Soutter,) of the exactment which each and every of the present owners and holders of said last named bonds paid for said bonds, and of the right, title and claim of each and every of said holders to said bonds, and whether they pretended to be, the owner or owners thereof or to hold the same as collateral security for some and specifically, what indebtedness; from whom said holders of said bonds received the same, and how, when and where, and for 84
what purpose and in what right they respectively received the

bonds by them respectively held; and what sum of money, or thing or things of value, and how much and what amount, said La Crosse and Milwaukee Rail Road Company, received for, and on account of the said bonds so by each and every of said holders respectively held.

And your orator is informed, advised and believes, and there upon shows and insists that inasmuch as said La Crosse and
85 Milwaukee Railway Company were not in the law authorized to issue their bonds for sale in the market, but were only authorized by law to borrow money on bond and mortgage, that only the sum actually loaned upon or advanced to said last named company for and on account of said bonds, together with interest thereon, can be recovered on said bonds.

And your orator further states and shows to the Court that none of said last named bonds were delivered in evidence of the indebtedness of said Company for the precise sum mentioned in
86 said bond; and that for no one of said bonds did said La Crosse and Milwaukee Railroad Company receive in money the amount of the face thereof, and that all said bonds were passed and delivered as hereinbefore set forth, from the said last named company, before they had been passed in due course of business, or been owned or held by any *bona fide* holder or holders thereof.

And your orator further shows to the Court that it has no means by which to establish the facts and things in this said bill set forth, without the discovery thereof from and upon the oaths
87 of the said Bronson and Soutter; and your orator prays full discovery from them in the premises, on oath.

Your orator further shows that since the commencement of the foreclosure suit by said Bronson and Soutter as hereinbefore set forth, the said Bronson and Soutter, by their agent Prentiss Dow, have been in possession of the said Railroad, and of its revenues, tolls and income they have received by their said agent eighty-four thousand dollars, which ought to be applied to the payment of such sum of interest as the Court shall decree is due upon said bonds, described and secured in and by said deed to
88 said Bronson and Soutter; and your orator states that that sum

is more than sufficient to pay the legal interest on all sums of money or amount of moneys worth, ever received by said La Crosse and Milwaukee Railroad Company for said bonds; and your orator claims that the same shall be so applied. To the end therefore, that the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according 89
to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to this your orator's bill, and that the said defendants may set forth and discover fully all the matters and things aforesaid, as fully as if they were thereunto fully and particularly interrogated, paragraph by paragraph, and that they may particularly set forth and discover:

1. Whether said Bronson did not in some way, at some time, receive fifteen, or some other number of said bonds; and what, 90
and in what, and how much said Bronson paid said Company therefor, and if in stock of said Company, or in other securities of and against said Company, what was the market value of said stock or other securities of said Company he paid therefor, at the time he so paid the same, and whether he now owns and holds the said bonds or any, and how many of them; and how many of said bonds has he disposed of, and if any, when, where, to whom, for what price and consideration, and why disposed of?

2. Whether said Soutter did not in some way, at some time, 91
and when, where, and in what way, receive fifty-five, or some other number of said bonds; and if so, of whom he received them; what he paid the said La Crosse & Milwaukee Company or other person, and who, therefor; and what was the market value of what he paid therefor, at the time he so paid the same; and whether he has disposed of said bonds so received by him, or any, and how many of them; and when, where, to whom, for what price, or thing in value, and for what reason, he disposed of the same, and what, and how much, and what in value he re- 92
ceived therefor?

3. Whether said Soutter did not retain fifty-five or some other number, and what number of said bonds, when the same had been executed by said company and delivered to him to be signed by him; and whether he ever delivered said bonds so retained by him to said company or any, and what officer or agent of said company?

93 4. Whether any and what persons, are or at any time, and when, have been owners, or holders of any of said bonds; and what are their names, and where do they respectively reside; and what, and how much, and what value, and what amount did they respectively pay or give for said bonds?

5. Who requested said Bronson and said Soutter to take steps to enforce the lien of said mortgage or trust deed, how many of said persons and which of them held or owned any of said bonds, and how many did said respective persons respectively own or 94 hold or pretend to own or hold; and what sum did each and every of said persons pay or give for the bonds by them respectively owned or held or claimed to be owned or held?

6. What sum in the aggregate in money, did said La Crosse and Milwaukee Railroad Campany receive for said one thousand dollar bonds?

7. What amount in the stock of said company, did said Company or its officers pretend to receive in exchange for said bonds, and what was the price or market value of said stock at the time 95 the said company pretended to receive the same as aforesaid; and did said company receive said stock at par?

8. What amount did said company receive for said bonds in the bonds of said company, known as "Corruption Bonds;" and what amount known as "Barstow Bonds," respectively; and at what price did said company receive said "Corruption Bonds" and said Barstow Bonds respectively; and what was the market value of said "Corruption Bonds, and said "Barstow Bonds" respectively, when said company so received the same?

96 9. Who are the persons who received all and every of said bonds from said La Crosse & Milwaukee Railroad Company; and

where do they reside; and what amount in money did they respectively pay said company therefor; or advance to said company thereon respectively; and what amount and value in other things did they respectively give or pretend to surrender to said company therefor?

10. Whether the said defendants have by their agent received any and what sum of money out of the revenues, income, tolls 97
or earnings of said Railroad and franchises, and when the same was received.

And that said bonds pretended to be secured by said trust deed to said Bronson and Soutter, may be decreed to have been sold in the market by the La Crosse & Milwaukee Railroad Company without authority, and to be therefore null and void and be decreed to be discharged and cancelled in whose hands soever the same may be.

And that the said defendants may be compelled to make full and complete discovery of all the matters and charges aforesaid. 98

And that the said mortgage or deed of trust to said Bronson and Soutter may be decreed and declared void and of none effect.

And that if said Court shall be of opinion that said bonds mentioned in said deed to said Bronson and Soutter, and the said deeds are not absolutely void that then, and in that case, an account may be taken of the exact sum in money or amount in value which the said La Crosse & Milwaukee Railroad Company realized for or received upon said bonds respectively; and that each and every pretended owner or holder of any of said bonds 99
may be ordered and decreed to prove before a commissioner to be appointed for the purpose of stating said accounts, what sum or what amount in value he paid for the said bonds held by him, and that he may be compelled to be examined on his oath before said commissioner, or in such other way as the Court shall direct; and that on the coming in of the report of said commissioner the Court may order, adjudge and decree that each and every of said bonds shall stand as a security and evidence of indebtedness to the precise amount of money or money's worth, realized by said 100
company for said bonds respectively, and interest upon that sum

and no more; and that the said defendants may be enjoined and each and every holder of any of said bonds be enjoined from prosecuting upon said bonds for any other or greater sum than said La Crosse & Milwaukee Railroad Company received and realized therefor or thereon; and that said defendants may be compelled to account for said eighty-four thousand dollars or
101 other sum of money received by them, and pay the same over to the receiver in the cause to abide the final order of the Court in that behalf.

And that your orator may have such other or further relief as the nature of its case may require, and as shall be agreeable to equity and good conscience.

May it please your Honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of said Court, to be directed to said Greene C. Bronson and James T. Soutter, commanding them and each of them by a certain day and under a
102 certain penalty therein to be inserted, to be and appear before the District Court of the United States for the District of Wisconsin in equity, and then and there to answer the premises; and further to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

CARPENTER & GRIDLEY,
Solicitors for Compl't.

MAT. H. CARPENRER, of Counsel.

ORDER OF SERVICE OF SUBPŒNA.

103 Whereupon it is ordered by the Court that a subpœna do issue, and that the same be served on Thomas L. Ogden, the solicitor of these defendants.

Whereupon a subpœna issued returnable first Monday of October next, as follows:

UNITED STATES OF AMERICA, } ss.
District of Wisconsin. }

*The President of the United States of America to*

[SEAL] *Greene C. Bronson and James T. Soutter, Greeting:*

104 You are hereby commanded that you personally appear before the Judge of the District Court of the United States of America,

for the District of Wisconsin, in our Court of Chancery, in and for the District aforesaid, on the first Monday of October next ensuing, at Milwaukee, to answer to a bill of complaint, exhibited against you in our said Court, by the Milwaukee and Minnesota Railroad Company.

And to do further, and receive what our said Court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue. 105

This process of subpœna is directed to the Marshal of this District, who is hereby commanded to serve the same upon the said Greene C. Bronson and James T. Soutter, if to be found in his District, and due return thereof make.

Witness the Hon. Andrew G. Miller, Judge of the District Court of the United States for the District of Wisconsin, at the City of Milwaukee, in the said District, this third day of September in the year of our Lord one thousand eight hundred and sixty and of our Independence the eighty-fifth. 106

J. M. MILLER, Clerk.

CARPENTER & GRIDLEY, Solicitors.

It is ordered by our said Court, that the said Greene C. Bronson and James T. Soutter, the defendants aforesaid, do enter their appearance in this suit in the Clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

And said subpœna was endorsed as follows: 107

September 3, 1860, ordered by the Court, that this subpœna be served on Thomas L. Ogden, Esq., the solicitor for these defendants.

J. M. MILLER, Clerk.

And said subpœna was duly returned by the said Marshal on or before the return day thereof, with his return endorsed thereon, as follows:

RETURN.

"Served on the within named Greene C. Bronson and James T. Soutter, by delivering a copy of this subpœna personally to 108

Thomas L. Ogden, their solicitors, this 13th day of September, A. D. 1860.

"J. H. LEWIS, Marshal,

"Fees, $2.46. By F. HENRY, Deputy."

## DEMURRER.

100 November 7, 1860.—This day came the defendants by their Solicitor, Mr. Ogden, and filed their demurrer subject to the order of the Court on the motion made by the complainants in the original bill to set aside said Cross-Bill, and vacate the order of the service of the subpœna. Which said demurrer is as follows:

### DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN—IN CHANCERY.

110 THE MILWAUKEE & MINNESOTA RAILROAD COMPANY,

*against*

GREENE C. BRONSON and JAMES T. SOUTTER,

The demurrer of Greene C. Bronson and James T. Soutter, defendants, to the Cross-bill of Complaint of the Milwaukee and Minnesota Railroad Company, complainant.

111 These defendants, by protestation not confessing all or any of the matters and things in the complainant's said bill to be true, in such manner and form as the same are therein stated and alleged, demur thereto and for causes of demurrer show that the said complainants have not in or by their said Bill of Complaint made or stated such a case as doth or ought to entitle them to any such discovery as is thereby sought or prayed for, from or against this defendant; wherefore this defendant demands judgment of this honorable Court whether he shall be compelled to make any further or other answer to the said bill, or any of the
112 matters or things therein contained and prays to be hence dismissed with their reasonable costs in this behalf sustained.

And for further causes of demurrer these defendants show:

1st. That said complainant in and by said bill shows no title or interest to enquire into any frauds that have been committed in the issue of said bonds.

2d. They do not allege that any bonds were actually executed.

3d. They do not show how the bonds issued to Chamberlain or Foster or Soutter were fraudulently issued. 113

4th. They do not show wherein the bonds issued to said Bronson were voidable.

5th. They do not show what bonds were so issued.

6th. They do not show to whom the 600 bonds were sold, or on what terms.

7th. They do not show who are the present holders of said bonds or any of them, or whether the present holders took the same with or without notice.

8th. They do not make the parties to the fraud or the present holders of the bonds parties to the suit. 114

9th. The bill is a fishing bill as to the discovery sought.

10th. They do not set forth the facts constituting a fraud.

11th. The relief sought is not proper or necessarry to a defence and not the subject of a Cross-bill.

12th. No enquiries can be instituted into the considerations of bonds.

THOMAS L. OGDEN,
Sol'r for dft's.

I hereby certify that I have read the foregoing demurrer, and that the same is in my opinion, well founded in point of law. 115

JAMES S. BROWN,
Of Counsel.

DISTRICT OF WISCONSIN—ss.

Prentiss Dow being duly sworn, deposeth and saith, that he is agent for said defendants, who are not and have not been since the filing of said Bill, within the State of Wisconsin, and that said demurrer is not filed for delay.

P. DOW.

Subscribed and sworn to before me, Nov. 5th, A. D. 1860. 116

J. M. MILLER, Clerk.

This demurrer is filed subject to the order of the Court on the motion made by the complainants in the original bill to set aside said Cross-Bill, and vacate the order for the service of the subpœna.

THOS. L. OGDEN,
Solicitor for Defts.

And on November 7, 1860, the following motion (above referred to) was filed in the original bill to set aside said Cross-Bill and vacate the order for the service of the subpœna as follows:

117

*Motion to set aside Cross-Bill and service of Subpœna.*

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.—In Equity.

GREENE C. BRONSON, and JAMES T. SOUTTER,

118

*against*

THE LA CROSSE & MILWAUKEE RAILROAD RAILROAD CO., *et al.*

And now comes said complainants and move that the order directing the service of the subpœna upon the Cross-Bill filed in the name of the Milwaukee & Minnesota Railroad Company, upon the attorney of the complainants be vacated, and also that said Cross Bill be set aside and removed from the files,—

119 1st. Because there is no order of the Court allowing the parties who use the name of said company to file a Cross-Bill in said name.

2d. Because said Bill is in all essential matters an original Bill and entirely unnecessary to the defence in this cause.

3d. Because on its face it is a fishing Bill.

4th. Because the relief and discovery sought, requires other parties than the parties to this suit.

THOMAS L. OGDEN,

120

Solicitor for Compl'ts.

And now at said term, October term, 1860, and on the 26th day thereof, to-wit: On the eighth day of December, A. D. 1860, the following proceedings were had to-wit:

DISMISSAL.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,

*against*

GREENE C. BRONSON and JAMES T. SOUTTER.

} IN EQUITY. 121

This day came the parties by their counsel, and the motion to strike this Cross Bill from the files having been argued, on consideration whereof it is ordered by the Court that the said bill be and hereby is stricken off. The same having been filed by Alexander Fleming, in the name of the Milwaukee and Minnesota Railroad Company, without previous leave of the Court so to file the same. Dismissed. 122

UNITED STATES OF AMERICA, } ss.
DISTRICT OF WISCONSIN. }

I, John M. Miller, Clerk of the District Court of the United States of America for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the Cross Bill of the Milwaukee and 123 Minnesota Railroad Company against Greene C. Bronson et al., filed September 3, 1860.

Inn testimony whereof, I have hereunto set my hand and duly affixed the seal of the said Court, at the [SEAL.] City of Milwaukee, in the said District of Wisconsin, this third day of December in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the said United States the eighty-eighth.

(STAMP.) J. M. MILLER, Clerk. 124

# SUPREME COURT OF THE UNITED STATES.

| No. 132. | No..... |
|---|---|
| GREENE C. BRONSON and JAMES T. SOUTTER, *Trustees, &c.,* | THE MILWAUKEE & MINNESOTA R. R. CO., Impl., &c., |
| *vs.* | *vs.* |
| THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, *and others.* Defts. | JAMES T. SOUTTER, Survivor of GREENE C. BRONSON. |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

*To Thomas L. Ogden, Esq., Solicitor for said Complainants, and for said James T. Soutter, Survivor.*

*And to Hon. Thomas Ewing and J. M. Carlisle, Esq., of Counsel for said Complainants, and said James T. Soutter, Survivor.*

*And to N. A. Cowdrey, Esq., Counsel for said Soutter, Survivor.*

Please to take notice, that at the opening of the said Supreme Court of the United States, at the capitol in the City of Washington, on Friday morning, December 25, A. D. 1863, or as soon thereafter as Counsel can be heard, the Milwaukee & Minnesota Railroad Company, one of the defendants in the first above entitled cause, will move said Supreme Court in said above entitled causes, for a writ of prohibition to issue out of and under the eal of said Supreme Court, to be directed to the Honorable the

District Court of the United States for the District of Wisconsin, or to the Honorable Andrew G. Miller, Judge of said District Court of the United States for the District of Wisconsin, or to both; strictly enjoining, forbidding and prohibiting said Court and said Judge in said Court or otherwise, from proceeding at any time to make any order in the cause first above entitled in regard to the disposition of funds in the hands of the Receiver in said cause, or funds in any way pertaining to said cause; or making any order, direction, decree or judgment whatever in said cause.

Or that such writ be issued as aforesaid, strictly enjoining, forbidding and prohibiting said Court, and said Judge in said Court or otherwise from making any order, direction, judgment or decree in the said first above entitled cause, for the payment of any money by the Receiver in said cause, on any of the bonds or coupons mentioned in the bill of complaint, in the first above entitled cause, until after the determination of said Supreme Court of said appeal taken by said Milwaukee & Minnesota Railroad Company, from the final decree in the said first above entitled cause; or until the said appeal by said complainants, Greene C. Bronson and James T. Soutter, Trustees, shall be dismissed or otherwise disposed of by said Supreme Court.

Or that said complainants be ordered to elect whether they will claim performance of the said decree as rendered in the above entitled cause; and that their said appeal may be dismissed if they shall claim to take or accept any payment on said final decree, from the said Receiver or otherwise, from funds belonging to said cause first above entitled.

Or that the said Milwaukee & Minnesota Railroad Company may have such other or further, or different relief, as the nature of its case may require, and as shall be agreeable to equity and good conscience.

This motion will be founded on the record in the said Supreme Court, in the said first above entitled cause, and upon the record in said Supreme Court returned to said Court upon the appeal of the said Milwaukee & Minnesota Railroad Company to the said Supreme Court, from the final decree in the cause first above en-

titled, which was enrolled in the District Court aforesaid, on the 15th day of January, A. D. 1862; and upon the affidavit of A. Fleming, hereto attached.

Dated December 12th, A. D. 1863.

MAT. H. CARPENTER,

Sol. and of Counsel for the Mil. & Minn. R. R. Co., Defts.

## SUPREME COURT OF THE UNITED STATES.

| | |
|---|---|
| No. 132.<br>Greene C. Bronson and James T. Soutter, *Trustees*,<br>*vs.*<br>The La Crosse & Milwaukee Railroad Co., *and others.*<br>*Defts.* | No.....<br>The Milwaukee & Minnesota Railroad Company, Impl. &c.<br>*vs.*<br>James T. Soutter, Survivor of Greene C. Bronson. |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN—IN EQUITY.

DISTRICT OF WISCONSIN.—ss.

Alexander Fleming, being first duly sworn on oath, says that he is a director of said Milwaukee and Minnesota Railroad Company, one of the defendants to the Bill of Complaint in the cause first above entitled, which last named Company is a corporation existing under the laws of the State of Wisconsin, and that he has had for many months, and now has charge of the interests of said Company in said cause, as agent for said Company, and that he makes this affidavit on its behalf.

That the final decree in the said cause first above entitled, was rendered by the District Court of the United States for the District of Wisconsin on the 13th day of January A. D. 1862; and that on the 17th day of January A. D. 1862, the said complainants, in whose favor said decree was rendered, took their appeal therefrom to this Court.

That afterwards, pending the said appeal before mentioned in this Court, to-wit: on the 26th day of September, A. D. 1862, the said Milwaukee and Minnesota Railroad Company made and entered into a certain stipulation in the first above entitled cause, and a certain contract with the said complainants in the said cause, a copy of which stipulation and contract are hereto attached and marked schedule "A"; that said stipulation was entered into only in pursuance of said contract, and that the agreements of said Company in said contract were entirely dependent upon the said Milwaukee and Minnesota Railroad Company obtaining possession of the so called Eastern Division of said Railroad mentioned in said contract, and rolling stock and franchises thereto pertaining, as this affiant is advised as to the legal effect of the same.

That although the year from the date of said contract mentioned in the fifth article of said contract expired on the 26th day of September, A. D. 1863, yet the said Milwaukee and Minnesota Railroad Company has never obtained nor had possession of said Eastern Division of Railroad, nor any part thereof, nor the other property and franchises mentioned in said contract; and that although both the parties to said contract have endeavored in good faith to perform the same, yet performance thereof has been rendered impossible by the refusal of the Circuit Court of the United States for the 9th Circuit and District of Wisconsin, to grant the motion of said parties to said contract upon their written stipulations in said cause, and give possession of said Eastern Division, rolling stock and franchises mentioned in said contract to said Milwaukee ann Minnesota Railroad Company, so that this affiant is advised by counsel, and thereupon respectfully submits to this Court, that the said stipulation and contract have become impossible to perform, without the fault of either party thereto, and have no further effect or validity whatever.

That after the said Circuit Court on or about the 21st day of July A. D. 1863, denied the motion and petition of said Company for said possession, and being advised by counsel that it was thus rendered impossible, that the stipulation and contract could ever be performed by the respective parties thereto, and that both parties were remitted to their rights and status in said

cause, as the same were before said stipulation and contract were entered into; the said Milwaukee and Minnesota Railroad Company, being aggrieved by said final decree, on the 14th day of September A. D. 1863, in the said Circuit Court and also in said District Court took and prosecuted an appeal from said final decree in said cause to this Court, which appeal and also the appeal taken by the said complainants are both still pending in this Court.

This affiant further says that although the said appeal, taken by said complainants as hereinbefore stated, was pending and undetermined in this Court at the time of the passage of the act of Congress of July 15, 1862, entitled "an act to amend the act of the third of March, 1837, entitled 'an act supplementary to the act entitled an act to amend the judicial system of the United States,'" and has ever since been pending and undetermined in this Court; yet the said District Court of the United States for said District of Wisconsin now pretends, and ever since the passage of the act of Congress of March 3d, 1863, entitled "an act to enable the District Courts of the United States to issue executions and other final process in certain causes," has pretended that the said cause is depending and remains in said District Court, and not in said Circuit Court.

That the said District Court, on the 12th day of June, A. D. 1863, or about that time, pretended to make an order in the first above entitled cause, as follows: "A petition in writing of the Milwaukee and St. Paul Railway Company, having been presented to the Court and filed in the case of Greene C. Bronson, James T. Soutter and Shepard Knapp, against the La Crosse and Milwaukee Railroad Company and others, setting forth in substance that in pursuance of a decree of this Court in that case, the Western Division of the La Crosse and Milwaukee Railroad, between La Crosse and Portage City has been sold, and that said sale was confirmed and perfected. And that said Milwaukee and St. Paul Railway Co. is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Co.

And the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse & Milwaukee Railroad Co., who is prosecuting a judgment creditors' bill, and of the Milwaukee & Minnesota Co., in opposition thereto. And the Court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse & Milwaukee Railroad Co., require that the court should not continue further to operate by its receiver, any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation. And the court being satisfied that its possession and control by a receiver of the Eastern Division, between Portage City and Milwaukee might affect the rights of the public, and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse & Milwaukee Railroad Co. And it being represented to the court, that persons interested in the Milwaukee & St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants, and the subject of this suit to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage.

It is thereupon ordered by the court that the order appointing a Receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering or modifying this order now here made: That the Receiver let the said Milwaukee & St. Paul Railway Co., into the possession of the Eastern division of the La Crosse & Milwaukee Railroad from Portage City to Milwaukee with the appurtenances and property and rolling stock thereto belonging. And that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said Court, operate said eastern division of said rail road in connection with the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original Charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption or diversion, the same as if the whole line

of road continued to be in one Company in pursuance of said Charter, and not otherwise.

And it is further ordered by the Court that the said Milwaukee and St. Paul Railway Co., shall at all times allow and permit the Receiver or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings receipts and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its Board of Directors, in relation to the business and operation of the whole line of road, and that the said Railway Co., shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month, deliver to the said Receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the Receiver the proportion of the said eastern division, of the net revenues of the said railroad. And that the said Receiver make monthly returns as heretofore of his accounts into Court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the Court, that before the said Milwaukee and St. Paul Railway Co., he permitted to have possession under this order, the said Company, by its constituted officers shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the Court, in the penalty of one hundred thousand dollars, conditioned that the said Company will faithfully comply with this order of Court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse & Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road, according to this order.

This affiant further says that the said District Court made said order in said cause of its own motion, no party or person having made any motion, petition or application in said cause, and without notice to any of the parties to said cause, so far as appears of record in said cause, and as this affiant is informed and believes; and that the value of the Railroad, rolling stock and franchises thus ordered to be by the Receiver delivered over to said Milwaukee and St. Paul Railway Company so called, is at least four millions of dollars; and that immediately after the date of said order the Receiver in said cause obeyed the same, and delivered said road, rolling stock and franchises thereto belonging to said pretended Milwaukee and St. Paul Railway Company; which last named Company is not a party to said cause, and its organization is, as this affiant is informed and believes, fraudulent and illegal, having been made or pretended to be made in violation of an injunction of the Supreme Court of the city and Co. of New York in a certain cause over which said last named Court had jurisdiction, and to which cause the persons pretending to form said corporation were parties or agents of parties thereto; and that said pretended Milwaukee and St. Paul Railway Company has ever since entering into the possession thereof as aforesaid, operated said Railroad and received its revenues.

This affiant further says that he is informed from the reports of the Receiver, that he has in his hands as Receiver in this cause, and as Receiver in another cause relating to the Western Division of said Railroad, mentioned in said order of June 12, 1863, over eighty thousand dollars; but that said Receiver in this cause has never made any report to said District Court, or to said Circuit Court, since the 30th day of June, A.D. 1862, showing how much money is in his hands as Receiver in this cause; but this affiant believes and thereupon states that said Receiver has in his hands as the Receiver in this cause over eighty thousand dollars.

And this affiant further says that said Milwaukee and St. Paul Railway Company has in its hands, belonging to the said Milwaukee and Minnesota Railroad Company, and which it ought to pay over to the Receiver in this cause, over two hundred thousand dollars, as this affiant verily believes, and that the said pre-

tended Milwaukee and St. Paul Railway Company has completely disregarded its duty as defined in said order, and has neglected to pay over to the Receiver in this cause the amount of revenues pertaining to the said Eastern Division; and that said last named Company has never paid over to the Receiver in this cause one dollar since it took possession of said road, rolling stock and franchises under said order of June 12th, 1863, as appears from the monthly statements of said Receiver since that time; but that on the contrary thereof, the said Receiver reports to said District Court that on ——day of June, A. D. 1863, he, the Receiver, paid of money in his hands to said Milwaukee and St. Paul Railway Company the sum of $29,157 45-100 dollars, but does not report what said payment was for, nor is there any order of any Court in said cause, that this affiant after diligent search has been able to find, authorizing said payment.

This affiant further states, that said District Court on the 5th day of October, A. D. 1863, and again on the 26th day of October A. D. 1863, pretended to make orders in said first above entitled cause, certified copies of which are hereto attached and marked Exhibit No. 1.

This affiant further says, that in the Milwaukee Sentinel, a newspaper printed in the city of Milwaukee, in said District of Wisconsin, on the 7th day of December, A. D. 1863, the following notice appeared, viz:

"In the District Court of the U. S. for the District of Wis-
"consin, Greene C. Bronson and James T. Soutter vs. The La
"Crosse & Milwaukee Railroad Company and others. In pur-
"suance of orders of said Court made on the 5th and 26th days
"of October, 1863, notice is hereby given that a report of the
"amount of money in my hands as receiver, will be made to the
"Court on the first Monday of January next, and that the Court
"will on that day hear all claims for said moneys, and order the
"disbursement thereof, according to said orders.

"Milwaukee, 28th November, 1863.

"H. CROCKER,
"Receiver La Crosse & Mil. R. R."

This affiant further says that the said District Court made said order in said cause of its own motion, no party or person having made any motion, petition or application in said cause, and without notice to any of the parties to said cause, so far as appears of record in said cause, and as this affiant is informed and believes; and that the value of the Railroad, rolling stock and franchises thus ordered to be by the Receiver delivered over to said Milwaukee and St. Paul Railway Company so called, is at least four millions of dollars; and that immediately after the date of said order the Receiver in said cause obeyed the same, and delivered said road, rolling stock and franchises thereto belonging to said pretended Milwaukee and St. Paul Railway Company; which last named Company is not a party to said cause, and its organization is, as this affiant is informed and believes, fraudulent and illegal, having been made or pretended to be made in violation of an injunction of the Supreme Court of the city and Co. of New York in a certain cause over which said last named Court had jurisdiction, and to which cause the persons pretending to form said corporation were parties or agents of parties thereto; and that said pretended Milwaukee and St. Paul Railway Company has ever since entering into the possession thereof as aforesaid, operated said Railroad and received its revenues.

This affiant further says that he is informed from the reports of the Receiver, that he has in his hands as Receiver in this cause, and as Receiver in another cause relating to the Western Division of said Railroad, mentioned in said order of June 12, 1863, over eighty thousand dollars; but that said Receiver in this cause has never made any report to said District Court, or to said Circuit Court, since the 30th day of June, A.D. 1862, showing how much money is in his hands as Receiver in this cause; but this affiant believes and thereupon states that said Receiver has in his hands as the Receiver in this cause over eighty thousand dollars.

And this affiant further says that said Milwaukee and St. Paul Railway Company has in its hands, belonging to the said Milwaukee and Minnesota Railroad Company, and which it ought to pay over to the Receiver in this cause, over two hundred thousand dollars, as this affiant verily believes, and that the said pre-

tended Milwaukee and St. Paul Railway Company has completely disregarded its duty as defined in said order, and has neglected to pay over to the Receiver in this cause the amount of revenues pertaining to the said Eastern Division; and that said last named Company has never paid over to the Receiver in this cause one dollar since it took possession of said road, rolling stock and franchises under said order of June 12th, 1863, as appears from the monthly statements of said Receiver since that time; but that on the contrary thereof, the said Receiver reports to said District Court that on ——day of June, A. D. 1863, he, the Receiver, paid of money in his hands to said Milwaukee and St. Paul Railway Company the sum of $29,157 45-100 dollars, but does not report what said payment was for, nor is there any order of any Court in said cause, that this affiant after diligent search has been able to find, authorizing said payment.

This affiant further states, that said District Court on the 5th day of October, A. D. 1863, and again on the 26th day of October A. D. 1863, pretended to make orders in said first above entitled cause, certified copies of which are hereto attached and marked Exhibit No. 1.

This affiant further says, that in the Milwaukee Sentinel, a newspaper printed in the city of Milwaukee, in said District of Wisconsin, on the 7th day of December, A. D. 1863, the following notice appeared, viz:

"In the District Court of the U. S. for the District of Wisconsin, Greene C. Bronson and James T. Soutter vs. The La Crosse & Milwaukee Railroad Company and others. In pursuance of orders of said Court made on the 5th and 26th days of October, 1863, notice is hereby given that a report of the amount of money in my hands as receiver, will be made to the Court on the first Monday of January next, and that the Court will on that day hear all claims for said moneys, and order the disbursement thereof, according to said orders.

"Milwaukee, 28th November, 1863.

"H. CROCKER,
"Receiver La Crosse & Mil. R. R."

And this affiant further says, that he verily believes that said notice was printed by direction of Honorable Andrew G. Miller, Judge of said District Court, and that the said Judge will on the day named in said notice proceed, in the District Court of the United States for the District of Wisconsin, to dispose of the said funds in the hands of said Receiver, or which may in any way come to his hands before that time; and that said Receiver will obey said order and pay over thereon and distribute and disburse the said funds in his hands, or that may before that time come to his hands, unless the said District Court, and the Judge thereof, be restrained, forbidden and prohibited so to do, by a writ of prohibition to be issued out of this Court directed to said Court and Judge, forbidding said Court and said Judge in manner and to the effect aforesaid.

A. FLEMING.

U. S. REV. STAMP. Subscribed and sworn to before me this twelfth day of December, A. D. 1863.

[SEAL.] Witness my hand and the seal of the District Court of the United States for the District of Wisconsin, the day and year above written.

J. M. MILLER, Clerk.

## SCHEDULE A.

This agreement, made and entered into this 26th day of September, A. D. 1862, by and between the Milwaukee and Minnesota Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, trustee named in a certain deed of trust or mortgage, dated on or about the 17th day of August, 1857, made by the La Crosse and Milwaukee Railroad Company, a corporation duly authorized to make the same, to secure the payment of the sum of one million of dollars and the interest thereon, according to the bonds therein described and set forth, party of the second part, Witnesseth, that whereas, a suit or action has been commenced in the U. S. District Court for the District of Wisconsin by said party of the second part, for the fore-

closure of said mortgage, and a decree entered therein, and the same has been duly appealed from by said party of the second part to the Supreme Court of the United States, where the same is now pending: and whereas, it has become desirable for the interest of the Railroad Company and both parties that the litigation be closed as early as possible, with a view to laying the foundation for a general settlement of all interests involved therein, and the keeping the said La Crosse and Milwaukee Railroad from being divided to the great injury of the parties interested, including the city of Milwaukee; therefore, the parties hereto, in consideration of the premises, and of one dollar paid by each party to the other, the receipt whereof is hereby acknowledged, do hereby agree and covenant to and with each other, as follows, viz:

*First*, The party of the first part will execute in due form, and procure to be executed in due form by A. Fleming, Sebre Howard, J. S. Rockwell and Graham & Scott, (parties defendant to the suit or action herein before mentioned,) their heirs, executors, assigns or representatives, stipulations, assents, memorandums or agreements to be used in the Supreme Court of the United States, in the Circuit Court of the United States embracing said District of Wisconsin, or in any other Court where it may be necessary, giving and granting to the said party of the second part a decree in their said suit or action according to the prayer of their Bill of Complaint, and fixing the interest due upon said bonds on the first day of September, 1862, at the liquidated sum of two hundred and eighty thousand dollars, together with their costs, charges, allowances and disbursements.

*Second*, The said party of the first part further covenants and agrees to and with the party of the second part, that for the purpose of securing the payment of said interest in arrears, and other purposes, it will execute in due form of law, with proper and apt covenants, and deliver to one or more trustee or trustees a mortgage upon said Railroad from Milwaukee to La Crosse, together with all its appurtenances and franchises, and all the rights and franchises of the said The Milwaukee and Minnesota Railroad Company, or to which in any manner the said party of the first part may be entitled, to secure the payment of bonds not

exceeding in the aggregate amount one million of dollars; and the said mortgage shall be subject only to prior liens, mortgages and incumbrances upon the said Railroad and property appertaining thereto, in the amount of five millions of dollars, including as part of said liens the mortgage to said second party first herein mentioned. The bonds to be issued under said mortgage for one million of dollars shall mature in the year 1872; shall bear interest at 6 per cent., payable semi-annually in the city of New York, on the first days of April and October in each year; the first coupon shall be payable October 1, 1863.

And it is further covenanted and agreed by said party of the first part, that it will execute and deliver to said party of the second part, their attorney or successors, one thousand bonds of two hundred and eighty dollars each, numbered from one to one thousand inclusive, secured by said mortgage as aforesaid, in trust for the satisfaction of the coupons in arrears and unpaid, embraced in the said decree hereinbefore stipulated for; and the same when paid are to be received in satisfaction of said coupons.

And it is further covenanted and agreed, that if said party of the first part shall fail to obtain the control of the whole of said Railroad from Milwaukee to La Crosse within one year from the date hereof, then and in that case the payment of said arrears of interest shall be secured in bonds as herein before described, but secured by a mortgage upon the portion of said railroad from Milwaukee to Portage City, and all its appurtenances and the franchises of the said Milwaukee and Minnesota Railroad Company; and the whole amount of bonds then and in that case to be issued under the same shall not exceed the sum of six hundred thousand dollars, and be payable as herein before set forth; and the said Railroad from Milwaukee to Portage City, embraced in said mortgage and its appurtenances, shall be subject only to prior liens, mortgages and incumbrances, including as aforesaid, in the amount of two millions, two hundred thousand dollars.

*Third*, The party of the first part further covenants and agrees, that whereas the stipulations following for the discharge of the Receiver appointed under the proceedings in foreclosure aforesaid, are entered into by said party of the second part only upon the

consideration of the decree herein before stipulated for being entered in said cause in due course of legal proceedings under this agreement, *Now therefore*, it is agreed that the party of the first part shall with reasonable diligence move, in conjunction with the party of the second, to perform all the stipulations herein contained as to said decree; and if in due course of legal proceedings in said foreclosure suit, and within one year from date of this agreement, for any reason whatever said decree shall be refused and denied *by the Court wherein said decree in said cause should properly be entered*, that is, if in consequence of the interference or opposition of any of the parties to said cause, or any other person or persons other than the party of the second part, said decree shall be denied: or if said decree shall be refused and denied by the Court for any reason whatever: then the party of the first part shall immediately on demand deliver said Road, franchises and all other things appurtenant or belonging to said Road, and from which said receiver shall have been discharged under this agreement, to said party of the second part; or, if the *interest* stipulated to be paid as set forth in article five of this agreement, or any portion thereof, shall not be paid as therein provided, then, within sixty days after such default, the said party of the first part will forthwith surrender said Road, rolling stock and all its franchises and appurtenances, from which the Receiver shall be discharged under this agreement or otherwise, to said party of the second part, their successor or successors, attorneys or agents, upon demand made by them or either of them for the same. And the party of the first part stipulates that this agreement may be enforced by the proper Court as by consent of parties, either in this cause or any other cause that may be pending in relation to said Railroad.

*Fourth*, The said party of the second part, in consideration of the hereinbefore recited covenants, stipulations and agreements, to be kept and performed by the said party of the first part, agree, that so soon as counsel can be heard in the District Court of the United States for the District of Wisconsin, or in the Circuit Court of the United States embracing said District, or any other Court where said motion can be made, the said party of the first part may move for an order of said Court discharging said Re-

ceiver; and the said party of the second part will, by written stipulation in said cause, assent thereto; and the party of the first part may enter into the possession of the said Railroad, and other property appurtenant thereto, with such assets as shall be found in the hands of the Receiver, or be under his control.

*Fifth.* Said party of the second part further covenant and agree, that if the said party of the first part shall execute and deliver the one thousand bonds of two hundred and eighty dollars each, as hereinbefore described, secured and subject only as herein stipulated, at any time within one year from the date hereof, the said party of the second part will receive the same, to be applied on said interest included in said decree: And no sale under said decree shall be had without the consent of said party of the first part, its successors or assigns, so long as the interest on the said bonds, issued under the mortgage given to the party of the second part first herein mentioned, becoming due on the first day of March, 1863, and thereafter accruing: the principal sum of one million of dollars secured by said mortgage; the interest upon bonds issued by the city of Milwaukee, in aid of the building of that part of said Railroad between Milwaukee and Beaver Dam, and the interest and Sinking Fund upon the First Mortgage of the La Crosse and Milwaukee Railroad from Milwaukee to Portage City, shall each and all be paid and discharged at the times respectively set forth for the payment of each and every of the same in the several deeds, mortgages, and agreements creating them liens upon said Railroad, or within the sixty days in the said several deeds specified.

It is understood, however, that the stipulations for decree hereinbefore provided for, shall express that said stipulations are made subject to the condition, that the said party of the first part shall, by the order or consent of the proper Court, have previously obtained, or simultaneously with the entering of said decree, shall obtain possession of the Railroad, franchises and other things covered by the mortgage first herein mentioned, in the possession of the Receiver in said foreclosure suit.

Signed, MILWAUKEE & MINNESOTA R. R. CO.,

By MOSES KKEELAND, *President.*

GREENE C. BRONSON, [SEAL.]
[SEAL M. & M. R. C.] JAMES T. SOUTTER, [SEAL.]
*Trustees,*
By their Attorney in fact,
PRENTIS DOW.

Attest,
DWIGHT W. KEYES,
*Secretary.*

## STIPULATION.

No. 1.

### IN SUPREME COURT OF THE UNITED STATES OF AMERICA.

GREENE C. BRONSON and JAS. T. SOUTTER, Trustees, &c.,
*Complainants,*
*vs.*
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others,
*Defendants.*

*Appeal from the District Court of the U. S. for the District of Wisconsin.*

*In Equity.*

It is hereby stipulated by the parties to the above-entitled cause, that the decree in this cause rendered be so reformed that a decree be entered by the Supreme Court in favor of the complainants, according to the prayer of their bill, and that the amount of interest due on the mortgage mentioned in the bill of complaint, up to Sept. 1, 1862, be liquidated at two hundred and eighty thousand dollars; and that said cause be remanded ac-

cording to law, to have such decree fully carried into effect—or that the decree in said cause be reversed, and the cause be remanded according to law, with directions to the Court below, to enter decree according to this stipulation. This stipulation is entered into in pursuance of a certain contract, a copy of which is hereto attached, marked Exhibit No. 1, and made a part of this stipulation. And this stipulation is upon the express condition that the Milwaukee and Minnesota Railroad Company shall have obtained possession of the railroad franchises and other things now in the hands of the receiver in this cause, either before said decree shall be entered, or simultaneously with the entering of said decree, shall obtain such possession.

Dated Sept. 26, 1862.

LEVI HUBBELL,
Solicitor for Sebre Howard, dec'd, and of Charles Howard, Assignee of Judgment of S. Howard.

MAT. H. CARPENTER,
Solicitor for Graham & Scott, The Milwaukee and Minnesota Railroad Company, and Alexander Fleming, Defts.

LEVI HUBBELL,
Solicitor for John S. Rockwell, Deft.

THOS. L. OGDEN,
Sol'r for Complainants.

JAS. S. BROWN,
Of Counsel.

# IN CIRCUIT COURT OF THE UNITED STATES,

FOR THE EIGHTH CIRCUIT AND DIST. OF WISCONSIN.

GREENE C. BRONSON and JAS. T. SOUTTER, Trustees, &c.,
*Complainants,*

*vs.*

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others,
*Defendants.*

IN EQUITY.

It is stipulated by the parties to this cause, that the said Court shall reform the decree entered in this cause, so as to enter a decree in the above-entitled cause in favor of said complainants, according to the prayer of the bill of complaint, and liquidating the amount of interest due on the mortgage mentioned in said bill, up to Sept. 1, 1862, at two hundred and eighty thousand dollars. This stipulation is made in pursuance of an agreement, a copy of which is hereto attached and marked Exhibit No. 1, and made part of this stipulation. And this stipulation is made upon the express condition that the Milwaukee and Minnesota Railroad Company shall, with the assent of the Court, have obtained possession of the railroad franchises and other things in the receiver's hands in this cause, before the entering of said decree, or shall thus, simultaneously with the entering of such decree, obtain such possession.

Dated, September 26, 1862.

THOS. L. OGDEN,
Solicitor for Complainants.

MAT. H. CARPENTER,
Solicitor for Graham & Scott, The Milwaukee and Minnesota Railroad Company, and Alexander Fleming, Defts.

LEVI HUBBELL,
Solicitor for Sebre Howard, deceased, and of Chas. Howard, Assignee of S. Howard, and John S. Rockwell, Defts.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE 8TH CIRCUIT AND DISTRICT OF WISCONSIN.

IN EQUITY.

GREENE C. BRONSON and JAS. T. SOUTTER, Trustees, &c.
*Complainants.*

vs.

THE LA CROSSE & MILWAUKEE RAILROAD CO., and others,
*Defendants.*

It is stipulated by the parties defendant hereto subscribing, that pending the proceedings in the Supreme Court of the United States, or in this Court, for the decree stipulated for in the above-entitled cause, the said complainants may have an order or orders of this Court in the said cause, for the payment of the coupons on the bonds described in their bill of complaint, which will fall due the first day of March, A. D. 1363, and thereafter, pending the said proceedings under said stipulation for the decree therein mentioned.

Dated Oct. 6, 1862.

MAT. H. CARPENTER,
Solicitor for the Milwaukee and Minnesota Railroad Company, Graham & Scott, and Alexr. Fleming, Defts.

LEVI HUBBELL,
Solicitor for Sebre Howard, deceased, and of Charles Howards, Assignee of Sebre Howard, and John S. Rockwell, Defts.

## EXHIBIT No. 1.

UNITED STATES OF AMERICA, District of Wisconsin. } ss.

At a special term of the District Court of the United States of America for the District of Wisconsin, begun and held according to law, at the City of Milwaukee, in said District of Wisconsin, on the second Monday (being the thirteenth day of July, A. D. 1863,) present the Honorable Andrew G. Miller, Judge of said Court presiding.

On the thirteenth day of said term, to wit, on the fifth day of October, A. D. 1863, the following proceedings were had, to wit:

JAMES T. SOUTTER, Surviving Trustee,

*vs.*

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, SELAH CHAMBERLAIN, SEBRA HOWARD, et al. } IN EQUITY.

The petition on behalf of the complainants for an order to pay to them revenues of the road, having been presented for the consideration of the Court, it is ordered by the Court that after the disbursements of moneys arising from the revenues of the Eastern Division of Railroad, from Milwaukee to Portage City, to previous incumbrances and necessary expenses, the Receiver pay to the holders of the bonds secured by this mortgage, respectively their proportional share of such surplus, if any, as may be in his hands, taking the receipts therefor of said bondholders by themselves or their agents.

And all such payments to be credited on account of the present decree of this Court or such decree as may be eventually made in this cause, if the present decree be reversed or modified. And when coupons are presented separate from bonds, the payment is to be endorsed on the coupons, taking the receipt of their holders for the same.

The payments of the Receiver in all cases to be applicable to the coupons first payable. On objection to the payment of coupons detached from bonds, the receiver will not pay the same without a special order of Court.

October 26, 1863. The Receiver will make report to the Court on the first Monday of January next, of the amount of money then in his hands after paying previous incumbrances, according to the order of the 5th of October inst. And he will give notice by publication in one newspaper published in the City of New York, and in one newspaper published in the city of Milwaukee, for thirty days; that on said first Monday of January next, the Court will hear and determine all applications for money under said order.

UNITED STATES OF AMERICA, } ss.
District of Wisconsin. }

I, John M. Miller, Clerk of the District Court of the United States of America for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office, being copies of orders of Court, of the fifth and twenty-sixth days of October, 1863, made in the case of James T. Soutter, Survivor, &c, against the La Crosse and Milwaukee R. R. Co., et als.

In testimony whereof, I have hereunto set my hand and and duly affixed the seal of the said Court at the City of Milwaukee, in the said District of Wisconsin, this twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-eighth.

[SEAL.]

U. S. REV. STAMP.

J. M. MILLER, Clerk.

661

# SUPREME COURT OF THE UNITED STATES.

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| No. 132.<br>GREENE C. BRONSON and JAMES T. SOUTTER,<br>*Trustees, &c.,*<br>*vs.*<br>THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, *and others.*<br>Defts. | No.... ....<br>THE MILWAUKEE & MINNESOTA R. R. CO., Impl., &c.,<br>*vs.*<br>JAMES T. SOUTTER, Survivor of GREENE C. BRONSON. |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN—IN EQUITY.

## *BRIEF ON MOTION FOR WRIT OF PROHIBITION.*

MAT. H. CARPENTER,
*Sol. for Mil. & Minn. R. R. Co.*

# SUPREME COURT OF THE UNITED STATES.

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| No. 132.<br>GREENE C. BRONSON and JAMES T. SOUTTER, *Trustees, &c.*,<br>*vs.*<br>THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, *and others.* Defts. | No.....<br>THE MILWAUKEE & MINNESOTA R. R. CO., Impl., &c.,<br>*vs.*<br>JAMES T. SOUTTER, Survivor of GREENE C. BRONSON. |

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN—IN EQUITY.

## *BRIEF ON MOTION FOR WRIT OF PROHIBITION.*

The papers filed as the foundation of this motion, show that the District Court of the United States for the District of Wisconsin, claims jurisdiction over the first above entitled cause, nothwithstanding the act of Congress of July 15, 1862, creating the Circuit Court for that district, and has made important orders therein, and now proposes to proceed in said cause, to dispose of the funds in the hands of the receiver, notwithstanding said act of congress and notwithstanding the said appeals now pending in this Court.

The questions involved in this motion are :

*First*, Has the District Court any jurisdiction over the cause

in which these appeals were taken ; which depends upon the construction to be given to the two acts of Congress.

Act of July 15, 1862, Chap. 178, 2d Sess. 37 Cong.

Act of March 3, 1863, Chap. 113, 3d Sess. 37 Cong.

*Second*, If the District Court has jurisdiction of said cause, can it, pending the appeals, pay out the funds in the Receiver's hands on the decree appealed from by both parties.

*Third*, If the Court has not jurisdiction ; or if having jurisdiction it ought not to pay out the funds on the decree appealed from, will this Court issue the writ of prohibition.

I

This cause is in the *Circuit*, and not in the *District* Court. Final decree of foreclosure and sale was rendered on the 13th day of January A. D. 1862 ; but from that decree in their own favor, the complainants on the 17th day of January A. D. 1862, appealed to the Supreme Court of the United States. This appeal was pending, and there was therefore no final decree in the cause, that could be executed at the passage of the act of July 15th, 1862, organizing the Circuit Court. That act provides— "Sec. 3, That all actions, suits, foreclosures, causes, pleas, "process, *and other proceedings relative to any cause*, civil or "criminal, of Circuit Court cognizance, now pending in, or re- "turnable to the District Court, on the first day of October next, "shall be and are hereby declared to be respectively transferred, "returnable and continued to the Circuit Court, and shall be "heard, tried and determined therein, in the same manner as if "originally brought, entered, prosecuted or had in such Circuit "Court." Sec. 2 repealed the acts giving the District Court Circuit Court jurisdiction.

It is understood that this Court has construed this act and de-

cided that its effect was to transfer to the Circuit Court all unfinished business, as well in cases where there had not been, as where there had been final judgments or decrees. Indeed this is a necessary conclusion from the fact that the act abolished the civil jurisdiction of the District Court.

By this act therefore, this case was transferred to the Circuit Court, and is still pending therein, unless *re-transferred* to the *District Court* by the act of March 3d, 1863.

By the Act of March 3d 1863, it is provided "That in all "cases wherein the District Court had rendered final judgments "or decrees prior to the passage of (the act of July 15th 1862,) "said District Court shall have power to *issue writs of execu-* "*tion*, or other *final process*, or to use such other powers and "proceedings as may be in accordance with law, *to enforce the* "*judgments and decrees aforesaid*," anything in said act of July 15th 1862 to the contrary notwithstanding.

The manifest object of the act of July 15th 1862 to transfer to the Circuit Court all unfinished Circuit Court business, should not be defeated by the latter act, unless such construction is absolutely forced upon the Court by its language. It is not to be supposed that Congress would in July 1862 attempt a great judicial relief to the people of Wisconsin, and in March 1863 half undo it.

Whether or not Congress really intended to transfer to the Circuit Court all the records of judgments before then rendered, it is not necessary here to determine. But if it were necessary to discuss the question, there are many reasons for believing such was the intention—*First*, it was manifestly proper that the act which created the Circuit Court, should transfer to it all the records of cases which had properly belonged to it, and which the District Court *had decided for the Circuit Court.* This would relieve the District Court of all records which did not properly belong to its jurisdiction ; and would give the Circuit Court what

properly belonged to it, and enable it thereafter to proceed with its appropriate business, with the same harmony as if it had always existed. A thousand inconveniences are daily to arise, and the evil will continue for many years, if the records of decided cases are to be considered as remaining in the District Court, and the jurisdiction to entertain new suits and proceedings founded upon them is entirely in another Court.

*Second*— the language of the act is not only broad enough to accomplish this, as the Supreme Court has decided, but its language is conclusive of the actual intention of Congress to make this transfer. The word "pleas" is of most comprehensive significance; and includes all records in decided cases—Burrills Law Dictionary—But the language of the act is even broader than this, and includes all "*proceedings relative to any cause.*" Now it is hardly to be supposed that Congress intended to leave in the District Court a pile of records, which that Court could not act upon at all. It is far more natural to suppose that Congress intended to transfer them to the only Court that could entertain any "*proceeding relative to them.*"

Again, it will be conceded, I presume that the files, papers and records in those cases in which final judgments and decrees had not been rendered were transferred by the act to the Circuit Court. Yet the language of the act is the same as to all cases, whether judgments and decrees had been rendered therein or not.

But waiving the point as to records in causes where final judgments have been rendered and executed, it is certain that in all cases which required further exercise and application of judicial discretion, it was the design of the act that such *Circuit Court jurisdiction* should thereafter be exercised by the Circuit and not by the District Court. As the act of July 15th, 1862 took away all civil jurisdiction from the District Court, the act of March 3d, 1863, is the only one under which the District Court can now claim such jurisdiction. The jurisdiction by this act conferred is by quotation "*to issue writs of execution*, or other *final process*, or to use such other powers and proceedings as may be in accordance with law" *to enforce the judgments or decrees*, rendered before July 15th, 1862. What the District Court had adjudicated and

determined upon prior to July 15th, 1862, it may under the act of March 3d, 1863 execute and perform. Determination is an act of the mind, an exercise of judicial discretion, but executing what has been determined, is purely a ministaial act admitting of no judicial discretion whatever.

The act of March 3d, 1863 must have a construction. It says "In all cases in which the District Court had rendered final judgment or decrees, prior to July 15th, 1862, it shall have power to issue writs of execution and other final process to enforce such judgments and decrees," but of course it does not mean this exactly. For instance, in a case in which the District Court had rendered a final judgment prior to July 15th, 1862, and which before the passage of the act of March 3d, 1863, the Supreme Court had reversed, the District Court could not under this act enforce its judgment by an execution or other final process. Yet this is within the letter of the act. The act must and does mean just this—*In all cases where the District Court had rendered final judgments or decrees prior to July 15th, 1862, which ought then to have been, or ought now to be executed, the District Court shall have power to execute the same by execution or other final process.*

In this cause, there was not on the 15th of July, 1862, when the first act was passed, nor on the 3d March, 1863, when second act was passed, nor is there yet any decree that could or can be enforced. The decree was in favor of the complainants, and they had perfected their appeal prior to July 15th, 1862, which is still pending, and some of the defendants had, by leave of the Court, filed a cross bill against other defendants, which then was pending and undertermined.

By the rule of the English courts of equity prior to the revolution, and at the time this Court adopted the English Chancery rules of practice, an appeal had the effect to suspend the decree appealed from. The appeal took up the whole case, and it was to be heard *de novo*; not to correct errors in the decree merely, but to make such a decree as the case called for.

*Green v. Winter*, 1 *John Ch.* 77.
*Rules of Court adopted Aug. T.* 1791.

Following this rule, this Court holds that an appeal has this

effect in cases where an appeal is the proper remedy.

*Yeaton v. U. S.* 5 *Cranch* 281.

*Sch. Rachel v. U. S.* 6 *Cranch* 329.

*In Corning v. Troy Iron Co.* 15 *How.* 451, 466.

The Court say, "When the decree is either affirmed or reversed, *it becomes the decree of that* [the appellate] Court."

This Court has even held that a petition for rehearing suspends the decree, *and that for that reason, there is no final decree in the cause*, until the petition has been disposed of. *Brockett v. Brockett*, 2 *How.* 238. Therefore, if in any cause, a petition for rehearing had been pending in the District Court, on the 15th July, 1862, the cause would have passed into the Circuit Court, and must have been determined therein, and after such transfer, and pending said petition, the act of March, 1863, would not have taken the case back to the District Court; because until the petition for rehearing was determined, there would be no final decree. Then surely the appeal to this Court, taken by the complainants from the decree in their favor, must have as great effect as a petition for rehearing; it suspends the final decree; in other words, as this Court says in Brockett v. Brockett, *while the decree is suspended, there is no final decree.*

2. At the time of the passage of the act of July 15th, 1862, and also at the time of the passage of the act of March 3, 1863, there was a cross bill pending and undetermined in said cause. It is not to be presumed that Congress intended to divide a case, sending part of it to the Circuit Court, and retaining part of it in the District Court. The hearing of the cross bill could only be in the Circuit Court; because the act of 1862, repealed all civil jurisdiction of the District Court; and the act of 1863, only restored that jurisdiction so far as to authorize the District Court to enforce final decrees. And while any further judicial determination was required in the cause, fully to dispose of all the matters in controversy therein, *there was no final decree* within the meaning of *the act of March 3d*, 1863; and consequently the case remains in the Circuit Court notwithstanding the latter act.

In this cause at the last term, on a motion to dismiss the appeal, because there was no final decree therein; the Court says,

(2 Black, 531.) "This decree is not final in the strict technical, "sense of the word, for something yet remains for the Court below to do." The Court held the decree a *final* one, *within the meaning of the act of Congress regulating appeals.* A decree may be held final within the meaning of this act, which would not be so held under the act of March 3rd, 1863. The intention of the legislature controls this question. This Court gives a certain meaning to the words "final decree," in the act concerning appeals, because otherwise great unconveniences would arise. But in this act, the object of the legislature was to permit all future proceedings in undetermined causes of Circuit Court cognizance to de had in the Circuit Court. Therefore, within the meaning of this act, there is no "final decree" while there *remains anything to be done in the Court below.* The act as to an appeal, is one regulating the rights of parties. When there remains nothing more to be done in the Court below fully to determine a party's rights in the cause, then *as to him*, there is a final decree, and he may appeal. The act of March 3rd, 1863, had no reference to parties; but distributed causes among two courts. The manifest intention of this act was to send back to the District Court only those causes in which there remained nothing to be adjudicated as to any party therein. This is evident from the fact that the act only authorizes the District Court to *issue writs of execution, or other final process to "inforce the judgments and decrees aforesaid."* Those causes which required further adjudication, the act intended to leave to the appropriate Court. Therefore, in this act of March 3rd, 1863, *speaking of causes*, that is only a final decree *as to the cause*, which leaves nothing more to be done by the Court in the cause.

## II

But if the District Court has jurisdiction of the cause, can it order the Receiver, pending the appeals to perform the decree in favor of the complainants, which they have appealed from to this Court, by paying from the funds in Court any part of the decree.

A party cannot proceed to execute a decree in his favor, and at the same time prosecute an appeal therefrom.

*Vail vs. Remsen*, 7 *Paige* 206.

No more can he first appeal, and then execute the decree. The order of October 5, 1863, (page 19, printed motion papers,) directs the Receiver to pay money to the holders of bonds secured by the mortgage, to be credited on account of the present decree—the one appealed from— or such decree as may eventually be made in the cause. The payments to be applied to the coupons first payable. This totally ignores the stipulations in the case, and is made in execution of the decree.

III.

If the District Court has no jurisdiction of the cause; or if, having jurisdiction it has no right to execute the decree in favor of the complainants while they are prosecuting an appeal therefrom. Will this Court issue the Prohibition?

The judiciary act, Sec. 14, provides, "That all the before-"mentioned Courts of the United States, shall have power to is-"sue writs of *scire facias*, *haveas corpus*, and all other writs not "specially provided for by Statute, which may be necessary for "the exercise of their respective jurisdictions, and agreeable to "the principles and usages of law."

The office of a writ of prohibition is "to restrain all other Courts, from the eighest to the lowest, and whether or not of record, from proceeding in a matter over which they have no jurisdiction, or where having jurisdiction the Court has attempted to proceed by rules differing from those which ought to be observed, or where by the inferior Courts exercise of its proper jurisdiction, a legal right would be defeated, &c.

2 *Chitty's Gen'l Pr.* 355.

*Bullers N. P.* 219.

It is submitted that as a means of exercising this Courts appellate control over the Circuit Courts, the power to issue the writ of prohibition is undoubted. Suppose after a cause has been ap-

pealed and supersideas obtained, the Court below should proceede to execute the decree appealed from. The only remedy would be by prohibition from this Court.

The motion is in name for a writ to issue to a District Court; but it is to a District Court in its capacity as a Circuit Court, and the question is the same as if the motion were for a writ to a Circuit Court.

*In Exparte Christy*, 3 *How.* 322. this Court held it had no power to issue a writ to a District Court sitting in bankruptcy. In the opinion however, Judge Story says: "But it may be proper to say, as the point has been fully argued, that we possess no revising power over the decrees of the District Court sitting in bankruptcy; that the District Court in the present case has not interfered with, or in any manner evaded or obstructed the appellate authority of this Court," &c. This states the distinction between the decrees of the District Court sitting in bankruptcy, and the decrees of a Circuit Court sitting in equity, or the decrees of a District Court sitting as a Circuit Court, in equity, upon which we found the right to this writ in the present case.

MAT. H. CARPENTER,

*Sol. for Mil. & Minn. R. R. Co.*

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1 Statutes at Large 80-81

" 13.

" 14.

U. S. v Richard Peters Judge

3 Dallas 131

3 How. 293

11 Black 503

# Supreme Court of the United States.

DOE EX DEM. POMEROY & OTHERS,
vs.
THE STATE BANK OF INDIANA.

## Additional Points for Plaintiffs in Error.

It is claimed by the defendants in error that the court will not take cognizance of this case, because the record does not contain the verdict of a jury, or an agreed statement of facts.

The action was ejectment in the circuit court of the United States for the district of Indiana. The judgment was for the defendants. Error was brought to this court by the plaintiffs.

The first papers in the record are the pleadings and continuances—then [fol. 10] a statement that the issue was tried by the judge, a jury being waived.

Then comes the following statement: "The court, after hearing the evidence and being fully advised, find that the title of the defendant is the paramount and better title," to which finding the plaintiff excepts, and the plaintiff moves the court to grant him a new trial, and files his motion as follows, stating the grounds. Next [folio 11] is a short bill of exceptions sealed by the judge.

It recites that "after hearing the evidence which elsewhere appears in this record *and the agreement of counsel*" the court held, 1st, that the marshal's sale and deed to lessors of plaintiff were regular and valid; 2d, that the trust deed under which the defendants claimed was valid.

To the latter finding plaintiff excepted.

Then follows another and more extended bill of exceptions, containing a history of the trial [ending at fol. 111] and reciting [folio 12] that the parties in the suit, who both claimed under *David Webb* [fol. 11], agreed and admitted at the trial that Webb was the owner in fee of the lands in controversy when the trust deed was executed by him and one Shoemaker to William Jenners, April 5th, 1838, [set out at folio 82 of the record,] and said Webb so continued to own such lands until the judgment and sale by the marshal under which the plaintiff claimed as purchaser, such sale being made August 19th, 1849.

The suit in which that judgment was obtained was commenced April 28th, 1838 [fol. 14], and execution issued thereon Dec. 17th, 1838 [fol. 18].

The testimony in the case is then set out, containing, among other things, an order made by the circuit court of the United States for the district of Indiana, on the application of the lessors of the plaintiff, directing the successor of the marshal by whom the aforesaid sale was made under the execution, to deliver them the deed aforesaid [folios 36 to 39].

On this state of the record we make the following

## POINTS.

*First.* There is no question of fact to be examined in this case, and this court is not called upon to weigh, balance, or compare testimony, but simply and exclusively to determine pure questions of law. It is not, therefore, like the case of *Burr* vs. *Des Moines Navigation & R. R. Co.*, decided at the present term.

There the case had been tried by the judge without a jury, and to use the language of *Mr. Justice Miller* delivering the opinion of the court, and referring to the testimony "upon this large mass of evidence the counsel have argued the case before us."

There was no bill of exceptions nor agreed statement of facts, such as is in some cases required.

His Honor says, on a review of the case, that where there is no general or special verdict, and the cases arises on a statement, it must contain "the ultimate facts or propositions which the evidence is intended to establish, not the evidence on which those ultimate facts are supposed to rest."

It must [he says] "be sufficient without inference, or comparisons, or balancing of testimony, or weighing evidence to justify the application of the legal principles which must determine the case. It must leave none of the functions of a jury to be discharged by the court, but must have all the sufficiency, fullness, and perspicuity of a special verdict."

This, we submit, embodies the reason and principle of the rule applied in all cases like that which the learned judge was discussing, and the one now at the bar.

*Second.* In this case but two questions are presented on the record—the validity of a marshal's deed, and of a deed of trust. One is to be determined by record evidence only, and the other on the face of the instrument. These could not be decided by a jury. They would necessarily and in any event be questions for the court alone.

*Third.* Inserting all the testimony, while it disfigures the record, does not take away the power of this court, or our right to be heard.

The findings of the court below on the facts are conclusive.

7 Howard, 844.

The cases reported chiefly came from Louisiana, where trial without jury was provided for. In such cases, says Mr. Justice Grier [13 Howard, 197]—

"When a party feels aggrieved by the decisions of the court, a case should be made up, stating the facts as

*found by the court*, in the nature of a special verdict, and the judgment of the court thereon."

*Arthurs vs. Hart*, 17*th Howard*, *p.* 7, was another Louisiana case tried by the court without a jury, and came up on bill of exceptions.

Mr. Justice Nelson delivering the opinion of the court in that case states the correct practice in such a case at page 15, and says at the close of the evidence on the trial, the counsel should "present the propositions of law which, it is claimed, should govern the decision, and the court should state the rulings *thereon*, or in coming to its determination."

This and the other cases above cited were decided on the merits, although in each the form of the record was objected to.

In Graham vs. Bayne, 18 Howard, 60, the opinion of this court is delivered by Mr. Justice Grier, reversing the judgment of the circuit court and awarding a *venire de novo*. There was a question of fact which had not been decided, the case being tried without a jury. In regard to the good faith of a transaction, His Honor says, the case "contains no *finding or* agreement whatsoever as to this material fact."

The case of *Suydam* vs. *Williamson & al.*, 20 *Howard*, 428, was affirmed because there was no special verdict in an action tried by a jury.

In Kelsey vs. Forsyth, 21 Howard, 86, which arose in Illinois, the trial was without a jury. There was a general finding of "the issue in favor of the plaintiff," and a motion for a new trial on the ground that "said decision was against the evidence in the case."

The opinion of the court is delivered by Chief Justice Taney, who relies on the cases in 18 and 20 Howard above cited.

The same rule was applied in 21 Howard, 224.

*Fourth.* The question here presented is merely one of practice, and even in regard to this, as remarked by Mr. Justice Miller, in his opinion already cited, the "opinions delivered are not always reconcileable in every respect."

Our record is not liable to the judgment of condemnation rendered in any of the cases cited. We have clear and distinct findings by the court, on precise questions of pure law, in reference to matters of record and deed, such record and deed being set forth, and there being no matter of mere fact to debate.

The rest of the record is superfluous.

*Lastly,* If the court should differ with us it should order a new trial, or at least merely dismiss the writ of error without affirming the judgment.

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J. T. BRADY,
J. M. CARLISLE,
*Of Counsel.*